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1 UNITED STATES BANKRUPTCY COURT

2 SOUTHERN DISTRICT OF NEW YORK

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5 In the Matter of:

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7 GAWKER MEDIA, LLC, Case No. 16-11700 (SMB)

8 Debtor.

9 - - - - - x

10 GAWKER MEDIA, LLC, Case No. 16-12239 (SMB)

11 Debtor.

12 - - - - - x

13

14 U.S. Bankruptcy Court

15 One Bowling Green

16 New York, New York

17 December 13, 2016

18 10:34 AM

19

20 B E F O R E :

21 HON STUART M. BERNSTEIN

22 U.S. BANKRUPTCY JUDGE

23

24

25

1 Hearing re: Confirmation hearing

2

3 Hearing re: Bush Ross P.A. retention application

4

5 Hearing re: Debtors first omnibus objection to claims (D&O  
6 and employee indemnification claims)

7

8 Hearing re: Case conference

9

10 Hearing re: Debtors' application pursuant to Section  
11 327(e), 328(a), and 330 of the Bankruptcy Code, Bankruptcy  
12 Rules 2014 and 2016, and Local Rules 2014-1 and 2016-1 for  
13 entry of an order authorizing the retention and employment  
14 of Akin Gump Strauss Hauer & Feld LLP as special counsel to  
15 the special committee of the board of Gawker Media Group,  
16 Inc., effective nunc pro tunc to August 3, 2016

17

18 Hearing re: Debtors' motion pursuant to Bankruptcy Code  
19 Sections 105 and 502(e)(1) and Bankruptcy Rule 3018 for  
20 estimation of claim nos. 293, 294, and 295 filed by Albert  
21 James Daulerio

22

23 Hearing re: Debtors' motion pursuant to Bankruptcy Code  
24 Sections 105, 502(e), and 1129 and Bankruptcy Rules 3018 and  
25 3021 for approval of claims estimation and plan reserve

1       procedures

2

3       Hearing re: Motion of proposed Amici Curiae Society of  
4       Professional Journalists, Reporters Committee for freedom of  
5       the press, and 19 other media organizations for leave to  
6       file memorandum of law as amici curiae

7

8       Hearing re: Notice of agenda for hearing to be held  
9       December 13, 2016 at 10:00 a.m. (prevailing Eastern time)

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11      Hearing re: Case conference

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1 P R O C E E D I N G S

2 THE COURT: Okay. I read that you're an MVP in  
3 law 360, Mr. Galardi. I'm honored that you're hearing here  
4 today.

5 MR. GALARDI: Don't believe everything you read,  
6 Your Honor.

7 THE COURT: I don't.

8 MR. GALARDI: And it didn't make page 6. So I'll  
9 (indiscernible). I was kind of --

10 THE COURT: Okay. Congratulations.

11 MR. GALARDI: Well -- thank you, Your Honor.

12 We'll see how valuable I am after today's hearing. Your  
13 Honor, first I'd like to turn to the amended agenda that we  
14 filed last night and I think that will set the stage.

15 THE COURT: The amended agenda? I don't have an  
16 amended agenda.

17 MR. GALARDI: You don't have an amended agenda, we  
18 will --

19 THE COURT: Have we ever seen amended agenda?

20 MR. GALARDI: Again, things are moving.

21 THE COURT: All right. Give one to my clerk.

22 MR. GALARDI: Yes, I have.

23 THE COURT: Thank you.

24 MR. GALARDI: I think we did reach out to your  
25 office and advised us to the status of the confirmation

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1 hearing, but let me move through the matters on the amended  
2 agenda. There's just some updates, but all are positive.  
3 First, Your Honor has already entered a CNO with respect to  
4 the first matter. Turning to the second matter, there was a  
5 motion for a proposed amicus curiae by the Society of  
6 Professional Journalists. Your Honor did, in fact, grant a  
7 motion to shorten the time to be heard, that is to be heard  
8 today in connection with the confirmation. I don't know if  
9 Your Honor wants to hear that. I don't think there are any  
10 objections.

11 THE COURT: Is there any objection to the receipt  
12 of the amicus brief? Hearing no response, I'll grant the  
13 motion and receive the brief.

14 MR. GALARDI: And then finally, Your Honor -- and  
15 next, rather, Your Honor, the Simpson Thacher fee  
16 application by consent has been moved over to December 15th.

17 THE COURT: Let me mark these on my calendar here  
18 because I had them in a different order. It's no longer on  
19 my calendar, so it may have been moved.

20 MR. GALARDI: Yeah, I think we moved it because we  
21 filed a notice of adjournment when we had agreed with the  
22 U.S. Trustee to move all the fee application matters over to  
23 the 15th and coordinated with Your Honor's office.

24 THE COURT: Okay.

25 MR. GALARDI: Which brings us to matter four,

1 which is the debtors' proposed confirmation of an amended  
2 joint plan of liquidation. Your Honor, I think before we  
3 start with evidence on that, what I'd like to do is go  
4 through the objections. We believe, as I stand here today,  
5 that we have resolved all of the objections with the  
6 possible exception of what we conclude as an objection from  
7 XP Vehicles. I know Your Honor has received a number of e-  
8 mails. We've received a number of e-mails. My partner,  
9 Mr. Martin, will be handling that.

10 If I could go through the objections, I think it  
11 would be helpful for Your Honor in framing the evidence  
12 today as to what we had proposed to do to resolve those  
13 objections.

14 The first objection is the general objection of  
15 Mr. Charles Johnson and Got News to the amended plan. Your  
16 Honor may remember that we were here on December 1st with  
17 respect to claims objection. We had a motion to estimate.  
18 Mr. Johnson filed an objection to the confirmation. We have  
19 settled that and, again, Mr. Martin can put more details on  
20 as we get through this. But the key for the confirmation is  
21 one, we have settled that by reserving \$1.5 million of the  
22 Gawker Media unsecured assets to be a reserve to pay any  
23 allowed claim of Mr. Johnson. And I'm going to go through  
24 the claims reserve. But that resolves his objection and the  
25 parties have agreed to other terms. But that was to resolve

1 the confirmation objection.

2 Next you have the limited objection of Albert  
3 James Daulerio. Your Honor may recall Mr. Daulerio is  
4 subject to the judgment with Mr. Denton and the company with  
5 respect to Mr. Bollea. Mr. Daulerio's objection was an  
6 objection again to the Gawker Media reserve being not  
7 adequate. We have resolved that objection by allocating  
8 \$500,000 of the Gawker Media unsecured claims reserve to the  
9 payment of the allowed fees and expenses of Mr. Daulerio.  
10 Again, the debtor reserving all rights to object to whether  
11 that number is too high, but that is a cap. It is not a --  
12 it will not go higher. That has resolved the objection to  
13 Mr. Daulerio's -- that Mr. Daulerio raised to the plan.

14 There was also a limited objection of Publicist  
15 Media Agency's confirmation. They were concerned about set-  
16 off rights and the plan not protected their set-off rights.  
17 This was a contract, part of which was taken by the buyer,  
18 part of which is with us. There is -- they actually owe --  
19 we think it's probably the buyer, certain funds. They  
20 wanted to maintain their rights of set-off. We have  
21 resolved that objection with language in the proposed  
22 confirmation order that would, in fact, protect their rights  
23 of set-off to the extent that they still have a set-off.

24 The next objection is an objection of Mitchell  
25 Williams. Your Honor will recall he was here on

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1 December 1st. We had a pending claims objection. We had a  
2 pending estimation motion. There was also a stay -- a  
3 motion to lift stay to pursue the appeal. As Your Honor  
4 will hear in the evidence, we have resolved Mr. Mitchell  
5 Williams' objection to confirmation pursuant to an agreement  
6 to settle and pay Mr. Williams' claim, the total amount of  
7 \$125,000. We'll put on evidence as to how that structured  
8 payment, again, subject to Your Honor approving that, his  
9 settlement will be -- resolve his objection, resolve the  
10 stay motion, resolve the estimation motion, and resolve all  
11 of the underlying litigation.

12 Your Honor, the next one listed is the certain  
13 writers' response in support of confirmation. It also had  
14 the limited objection with respect to the Gawker Media  
15 unsecured claims reserve. That was to support the third  
16 party releases. Your Honor will hear evidence later on  
17 today regarding the benefits of that and I believe that  
18 based upon everything that I will tell Your Honor and that  
19 will testify for Mr. Holden today, we will fit -- even if we  
20 paid all of the claims, the maximum amounts with the  
21 agreements in the reserves, we will have more than adequate  
22 funds to pay from the reserves as a result of the  
23 settlement.

24 The next memorandum, as I mentioned, was the  
25 amicus curiae. Your Honor has granted their appearance.

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1 They have filed an amicus in support of the third party  
2 releases for the writers and journalists and editors of the  
3 company.

4 The next objection is really a statement of Dr.  
5 Shiva Ayyadurai and Ashley Terrill. Your Honor may recall  
6 we lifted the stay with respect to those two individuals.  
7 We had entered into settlements. We filed the plan  
8 settlement -- the plan supplement. In those plan  
9 supplements, you will notice that there are carve-outs with  
10 respect to pursuing potential causes of action or getting  
11 cooperation agreements. We have settled this objection to  
12 confirmation by adding language in the plan that you saw  
13 that was filed, I believe, Sunday night and provided to Your  
14 Honor on Monday with --

15 THE COURT: I didn't see it.

16 MR. GALARDI: Okay. It has language in it that  
17 provides that with respect to specific settlements where  
18 there was a carve-out to the third party releases and  
19 injunctions, that this is carved out. So they would be  
20 permitted to pursue, that is Dr. Ayyadurai and Ms. Terrill  
21 would be permitted to pursue the underlying writers. I will  
22 address that a little bit later with respect to the  
23 settlements. My understanding is the cooperation agreements  
24 are done with Mr. -- with Dr. Ayyadurai, so there will be no  
25 pursuit with respect to the writers, Mr. Biddle and

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1 Mr. Cook. With respect to Ms. Terrill, I think they reached  
2 an impasse and you'll hear a little bit about that when I  
3 give a proffer or put Mr. Holden on. But that objection to  
4 confirmation as been resolved nonetheless.

5 The next one is Mr. Martin has filed a submitting  
6 documentation regarding XP Vehicles. The matter has, I  
7 said, not been resolved. We have not had XP Vehicles. It  
8 was a late objection to the extent it was an objection.  
9 Mr. Martin will take up that objection when the Court wants  
10 to hear the objection specifically. There was a response by  
11 Mr. Bollea as Mr. Williams or Mr. Johnson had said that  
12 those settlements were not proper with respect to Mr. Bollea  
13 or Mr. -- Dr. Ayyadurai or Ms. Terrill. We will put on  
14 evidence to that, but that was a response.

15 And then finally, I believe, yesterday we received  
16 a confirmation objection from Meanith Huon who is not, I  
17 believe, on the call today but wants to be on the call on  
18 the 15th. Your Honor has -- may recall that Your Honor has  
19 ruled on parts of his claims objection, found that Mr. Huon  
20 has submitted himself to the jurisdiction of this Court.  
21 Mr. Huon has, in fact, filed a confirmation objection. We  
22 resolved that yesterday with the agreement that we'll also  
23 put on the record at the 15th because Mr. Huon wants to be  
24 on that hearing. We will settle that claim, resolving all  
25 the 7th Circuit litigation, all the litigation in Illinois,

1 all of the claims litigation here for the payment of  
2 \$100,000 out of the estate.

3 Those are the objections. If we go -- we can go  
4 forward with confirmation in one of two ways, Your Honor,  
5 and it's your docket and I understand it's quite full. One  
6 is I could proceed by direct testimony with Mr. Holden. I  
7 don't believe there's any contested testimony, or I can try  
8 to do a -- I can do a proffer for Mr. Holden and spare the  
9 direct testimony.

10 THE COURT: Well, I'm happy to hear a proffer  
11 subject to possible cross-examination by parties. The  
12 questions that are raised are not necessarily in any order:  
13 satisfaction of the best interest test; two, the  
14 settlements, the reasonableness of the settlements and  
15 you've told me about a couple more so we can deal with them  
16 today; and there's a third one that I had in mind that will  
17 come to me, but --

18 MR. GALARDI: Third party releases, by any chance?

19 THE COURT: The third party releases. All right.  
20 So those are the -- obviously there were more issues under  
21 1129(a). I note that everybody voted for the plan.

22 MR. GALARDI: Correct --

23 THE COURT: Acceptance of the 1129(b), and fair  
24 and equitable test, and all of that other stuff is not  
25 present.

1                   MR. GALARDI: Correct, Your Honor. Maybe what I  
2 will do is do it this way. I will do a proffer and then  
3 maybe just to clean up, I'll have Mr. Holden go on the stand  
4 a little bit with respect to the liquidation analysis. That  
5 will give Your Honor an opportunity --

6                   THE COURT: That's fine. You don't have to do a  
7 proffer with respect to the 1123(a) and (b) elements because  
8 I can read the plan --

9                   MR. GALARDI: Right.

10                  THE COURT: -- and determine whether or not  
11 they're satisfied.

12                  MR. GALARDI: And that's what I anticipated, Your  
13 Honor. And with respect to the settlements, I think I can  
14 put those on. And the third party releases I'll put on. So  
15 let me start with the proffer and then see where we go from  
16 there.

17                  THE COURT: Go ahead.

18                  MR. GALARDI: In the Courtroom today is  
19 Mr. William Holden who is now sitting over behind me off to  
20 what you would look to your right. Mr. Holden, if called as  
21 a witness, would testify that he's employed by Opportune and  
22 has served as the chief restructuring officer of GMGI and  
23 Gawker Media. And since the sale to Unimoda (ph), has been  
24 the managing director of Gawker Hungary. He's been employed  
25 by the debtor since May of 2016 and has been actively

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1 involved in these cases, has attended all board calls, and  
2 worked closely with the independent director of the debtors,  
3 Scott Tillman, regarding the sale, the claims resolution  
4 process, and the formulation and prosecution of the plans of  
5 reorganization and disclosure statements that have been  
6 filed before the Court.

7 He has been designated by the debtors with the  
8 consent of the committee to serve as the plan administrator,  
9 should the plan of reorganization be confirmed and go  
10 effective. With respect to the plan of reorganization,  
11 Mr. Holden would testify that he has reviewed, approved, and  
12 signed each of the disclosure statement and plan of  
13 reorganization filed in these cases, believe the information  
14 therein to be true and correct, and that such plan has been  
15 prosecuted in good faith with the intention to maximize  
16 value to all stakeholders and provide stakeholders a fair  
17 and equitable distribution to the assets in accordance with  
18 the absolute priority rule.

19 In that regard, Mr. Holden would testify although  
20 styled as a joint plan of reorganization, it consists of  
21 three plans of reorganization, one for each individual  
22 debtor: GMGI, Gawker Media, and Gawker Hungary. He would  
23 also testify that each debtor is organized under different  
24 laws. GMGI is organized under Cayman Islands law. Gawker  
25 Hungary under Hungarian law. And Gawker Media under

1 Delaware law in the United States.

2 Mr. Holden would then testify that the primary  
3 assets to be distributed under the plans of reorganization  
4 were derived from the sale of assets to Unimoda and to an  
5 allocation of those sale proceeds between Gawker Media and  
6 Gawker Hungary. In that regard, Mr. Holden would testify  
7 that the assets sold in the sale to Unimoda consisted solely  
8 of the assets of Gawker Media and of Gawker Hungary and no  
9 assets of Gawker -- of GMGI were sold. That Gawker Media's  
10 assets consisted -- so with respect to the Gawker Media  
11 plan, which constitutes a POT plan, it consists of sale  
12 proceeds and certain other existing bank accounts that have  
13 existed since the petition date and had cash that was  
14 clearly cash of Gawker Media.

15 Gawker Hungary's assets for the purposes of the  
16 distributions under its plan also consisted of its share of  
17 sale proceeds and the intercompany claim against Gawker  
18 Media. And the Gawker Media -- that Gawker Hungary had no  
19 other significant assets as of the petition date or as of  
20 the consummation of the sale.

21 And as I said before, Mr. Holden would also  
22 testify that GMGI had no material assets other than its  
23 equity interest in Gawker Media and Gawker Hungary as of the  
24 petition date or as of the closing sale. And consequently,  
25 Mr. Holden would describe each of the plans as a POT plan

1 pursuant to which cash proceeds from the sale and other cash  
2 that was on hand as of the consummation of the sale dates  
3 was being distributed.

4 With respect to the liquidation analysis,  
5 Mr. Holden would testify that he and others developed the  
6 liquidation analysis filed in support of the plan of  
7 reorganization.

8 Your Honor, maybe what would be a good idea is I  
9 know you have tons of paper up there, but if I may --

10 THE COURT: Well --

11 MR. GALARDI: -- bring the -- an exhibit that I  
12 would have had for Mr. Holden, it may be easy to move around  
13 in or --

14 THE COURT: That's fine. Is that the liquidation  
15 analysis that's attached to --

16 MR. GALARDI: Yeah. That's the liquidation  
17 analysis.

18 THE COURT: Yeah. I've got that. I have it.  
19 Okay.

20 MR. GALARDI: If other people -- we have a couple  
21 of binders. It may be easier to move around in, but it's  
22 Exhibit 5 in mine. It's Exhibit 5 in that binder there,  
23 sorry.

24 Now, Mr. Holden will testify that he and others at  
25 Opportune developed the liquidation and filed in support of

1 the plan. That he would further testify that the  
2 liquidation analysis and Your Honor can see from, I think  
3 it's -- I'm going to use the docket pages at the top of it,  
4 pages 266 of 557, 267 of 557, and 268 of 557, that those  
5 pages reflect individual liquidation analysis with respect  
6 to each of the specific debtors.

7 That in doing this liquidation analysis, what  
8 Mr. Holden did was to commence the liquidation analysis with  
9 the assets, which assets reflect the sale proceeds, net of  
10 payments of various secured claims, as well as the other  
11 assets remaining on the company's books and records and in  
12 their accounts as of the closing of the consummation of the  
13 sale, but brought forward to a date of December 31st, 2016  
14 so there are fees that would have been taken out in those  
15 amounts.

16 With respect to the liquidation analysis, Mr.  
17 Holden would testify that he began with the analysis of  
18 Gawker Media LLC and proceeded to go through the waterfall  
19 with respect to Gawker Media LLC and what would be achieved  
20 under that liquidation. With respect to Gawker Media, LLC,  
21 he assumed -- and with respect to all of the liquidation  
22 analysis, Mr. Holden would testify that he assumed that in  
23 each of those cases that a liquidating trustee would accept  
24 and be able to consummate each and every one of the plan  
25 settlements that is set forth in the plan of reorganization.

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1                   THE COURT: Does that include the allocation of  
2 the sale proceeds?

3                   MR. GALARDI: That includes the allocation of the  
4 sale proceeds, Your Honor.

5                   THE COURT: So what was the allocation to Gawker  
6 Media, LLC?

7                   MR. GALARDI: The ultimate allocation reached as a  
8 result of settlements, and we'll go back to that at some  
9 point, but it was 60 percent -- roughly 60 percent of the  
10 assets of the sale proceeds, Your Honor.

11                  THE COURT: So what does that translate to in  
12 dollars?

13                  MR. GALARDI: Of the net sale proceeds -- you did  
14 this to me last time and then I did it after the fact. So  
15 60 percent -- well, let's just start with 135, 60 percent --

16                  THE COURT: Well, you're starting with a cash --

17                  MR. GALARDI: -- about 88.

18                  THE COURT: You're starting with a cash value of  
19 55 -- 53,000,869.70.

20                  MR. GALARDI: Correct.

21                  THE COURT: So it looks like it's about 100  
22 million dollars of net proceeds?

23                  MR. GALARDI: Well, Your Honor, if you look --  
24 let's do it this way. If you look at the cash, you'd see  
25 the 53,000,869?

1 THE COURT: Yes.

2 MR. GALARDI: And then if you go to the page to  
3 the right, you'll see Gawker Hungary starting with cash of  
4 33,970?

5 THE COURT: Yes.

6 MR. GALARDI: Okay. Those are net cash proceeds  
7 after paying certain expenses with the sale and paying down  
8 secured debt. Those are the resulting numbers and certain  
9 expenses. I have to go back and we -- and Mr. Holden would  
10 testify, as we're doing it as a proffer, that he treated the  
11 debt as 65 -- 60/40 percent debt, 60 percent/40 percent with  
12 the Columbus Nova debt to arrive at those numbers. And then  
13 also took expenses, for example, there's a break up date and  
14 certain expenses to arrive at these net numbers as of that  
15 date.

16 THE COURT: So the expenses were allocated just as  
17 the proceeds were?

18 MR. GALARDI: Exactly.

19 THE COURT: Okay.

20 MR. GALARDI: Unless there was another reason to  
21 allocate them differently, Your Honor.

22 So they're starting with that analysis, Your  
23 Honor, what the liquidation analysis with Gawker Media shows  
24 that is if you go through the straight absolute priority  
25 rule and you move all the way down, you will see, as

1 Mr. Holden would testify, that the low recovery for the  
2 unsecured creditors of Gawker Media is 90.6 percent and a  
3 high recovery of 93.1 percent.

4 What Mr. Holden would testify is that even  
5 assuming that the trustee, a Chapter 7 trustee, could  
6 effectuate all of these settlements, including the plan  
7 settlement, and get the benefit of all of those settlements,  
8 that the creditors -- the unsecured creditors of Gawker  
9 Media would receive less than they are receiving or not more  
10 than -- less than they are receiving under the plan, because  
11 under the plan as now set forth with respect to the  
12 settlements that I put on the record with respect to the  
13 reserves, unsecured creditors will be paid 100 percent at  
14 Gawker Media.

15 THE COURT: Okay.

16 MR. GALARDI: Now, importantly, Your Honor, then  
17 once we -- once -- Mr. Holden, he would testify that once  
18 you ran through the numbers here with respect to the Gawker  
19 Media, I will draw Your Honor to a -- your attention to an  
20 intercompany claim line on the Gawker Media, which is three  
21 or four lines from the bottom. This is also set forth in  
22 the disclosure statement and was subject to certain  
23 objections.

24 Mr. Holden would testify that in doing the  
25 liquidation analysis that that entire claim was somewhere

1 around \$21 million to \$24 million, but that there was a 90  
2 percent payment and what happens is that money gets fed back  
3 into the Gawker -- you'll see the intercompany payment  
4 receivable in the inter -- in the Gawker Hungary assets.

5 Okay, so that's -- when I said before when Mr. Holden would  
6 testify, there was the initial allocation of cash from the  
7 sale. And then there was a payment on account of an  
8 unsecured claim that then funded the Gawker Hungary account.

9 Mr. Holden would testify today that that number is  
10 much higher than what will actually be paid over on account  
11 of the intercompany account, which I'll explain a little bit  
12 later today, so there were objections to that but there have  
13 been other reserves put forth and we'll explain that when I  
14 go through the plan.

15 Mr. Holden would then testify with respect to  
16 Gawker Hungary based on the assets that it has available to  
17 itself and its -- his review of the claims, he would have  
18 the allocation of proceeds 40 percent net of all the secured  
19 claims, plus anything it receives on the intercompany  
20 claims. And since there are very few claims under the  
21 Gawker Hungary plan, you will see that all creditors under  
22 the Gawker Hungary plan will, in fact, be paid in full under  
23 a liquidation analysis. You can't get better than paid in  
24 full. Well, maybe you could with some interest.

25 And then what there is is remaining proceeds for

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1 distribution. You will see at the bottom of that page 38 to  
2 40 million dollars, which those proceeds then form the basis  
3 of the liquidation analysis for GMGI.

4 Your Honor, I don't know if you have to turn the  
5 page or go to 268, you will see then at the Gawker GMGI  
6 level, you will see the gross liquidation proceeds being  
7 roughly the same numbers. There was a little bit of bank  
8 cash left online. There is a loan that is owed for  
9 Mr. Denton of \$200,000 that is added into that, not material  
10 assets. But based on the unsecured claims and based on  
11 third party releases and resolving the indemnification  
12 claims of people who might be at GMGI, that ultimately under  
13 the liquidation analysis, and these numbers have changed  
14 given certain facts and I'll explain it, that the equity may  
15 get anywhere from 34 to 38 million dollars at the end of the  
16 case.

17 With respect to the plan itself, Mr. Holden would  
18 testify that no junior class of creditors is receiving any  
19 distribution under the Gawker Media plan until and only if  
20 the Gawker Media unsecured creditors receive payment in  
21 full. In particular, there are two --

22 THE COURT: That's a credit down test. You don't  
23 have to satisfy that.

24 MR. GALARDI: I'm sorry -- because we haven't --

25 THE COURT: The plan has been accepted by

1 everybody who voted on it.

2 MR. GALARDI: Correct.

3 THE COURT: It doesn't matter.

4 MR. GALARDI: Correct, Your Honor. But there was  
5 a couple of questions about the voting and the  
6 gerrymandering and so I just wanted to make that point as to  
7 that.

8 THE COURT: I didn't understand the objections as  
9 to 2(e) and 2(c) but --

10 MR. GALARDI: I won't need to make their objection  
11 since we settled with them.

12 THE COURT: Good.

13 MR. GALARDI: So Your Honor, I think I understood  
14 it, but I don't need to do it.

15 Your Honor, with respect to the purchase price  
16 allocation settlement, and I think, Your Honor, just for the  
17 sake of everybody being on the same page because there are a  
18 number of settlements, if Your Honor would turn to the  
19 disclosure statement. It is, perhaps, helpful to look at  
20 the disclosure statement, the revised version, I believe  
21 it's on page 23. It starts on the disclosure statement.  
22 It's in the binder that I've just handed out. It's behind  
23 tab 3. There was a notice of a filing of disclosure  
24 statement. But I do want to take up each of the settlements  
25 and how those were negotiated.

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1           It starts on page 23 of the disclosure statement.

2   I have it on page --

3           THE COURT: Is that 23 of 139? Because that's the  
4 leaflet you sent to me.

5           MR. GALARDI: I have actually page 34 of 557. I  
6 can hand one up if it makes it easier --

7           THE COURT: Well, I have different --

8           MR. GALARDI: -- it's the (indiscernible) notice  
9 of filing.

10           THE COURT: What's the page number on it?

11           MR. GALARDI: It's actually page 23 at the bottom  
12 of the page.

13           THE COURT: Yeah.

14           MR. GALARDI: Yeah, it's probably the same  
15 version. It hasn't been changed. It was the --

16           THE COURT: This is the November 4th version.

17           MR. GALARDI: That's fine. Yes, Your Honor. With  
18 respect to the plan settlements, there are, as Mr. Holden  
19 would describe, there were in broad terms three basic plan  
20 settlements, all of which were intertwined. One of which  
21 was the purchase price allocation settlement that I just  
22 went through. But Mr. Holden would testify that a critical  
23 settlement was the settlement and allocation of the sale  
24 proceeds, which settlement allocated the value of the asset  
25 sold to Unimoda approximately 60 percent to Gawker Media,

1 and 40 percent to Gawker Hungary.

2 In that regard, Mr. Holden would testify that  
3 historically, asset value was considered to be held 33  
4 percent by Gawker Media and 67 percent to Gawker Hungary  
5 based on a -- based, in part, on a transfer pricing that the  
6 debtors received in December 2011. And, in fact, Mr. Holden  
7 would further testify that in the plan that the debtors  
8 filed back on September 30th, that was the allocation of  
9 assets and value that was taken at that time.

10 Mr. Holden would then testify that the creditors  
11 committee and certain creditors, including Mr. Bollea raised  
12 challenges to the allocation and the allocation of expenses  
13 with respect to that particular allocation, as well as to  
14 the importance and validity of that transfer pricing memo,  
15 which had not been updated since December of 2011. And as a  
16 result, the debtors and creditors committee, and certain  
17 creditors have been in negotiations along with negotiations  
18 with respect to Unimoda pursuant to the asset purchase  
19 agreement and tax advisors to Gawker Hungary regarding the  
20 proper allocation.

21 As a result of the negotiations with those parties  
22 over the last couple of months, and as a result of the  
23 settlements and being able to fund the settlements, the  
24 debtors have determined to settle such asset issues by  
25 allocating the value received in the Unimoda sale,

1 approximately 60 percent Gawker Media and 40 percent  
2 Hungary. That is also the distribution as I've mentioned  
3 already. Mr. Holden would testify in the beginning of the  
4 liquidation analysis. And then unless otherwise dictated by  
5 the circumstances and other considerations, expenses have  
6 been allocated consistent with that allocation.

7 As part of the intercompany settlements, there is  
8 also an intercompany settlement between Gawker Media and  
9 Gawker Hungary. With respect to that settlement, Mr. Holden  
10 would testify that --

11 THE COURT: Is that intercompany debt?

12 MR. GALARDI: This is intercompany debt between  
13 Media and Hungary, correct, Your Honor. But based on the  
14 current books and records of Gawker Media and Gawker  
15 Hungary, Gawker Media would owe net Gawker Hungary  
16 approximately \$23 million. Again, the creditors committee  
17 and other parties raised concerns regarding the bona fides of  
18 those intercompany claims, in part because of the -- they  
19 were based on the transfer pricing memo.

20 In that regard, Mr. Holden would testify that  
21 Opportune and other advisors conducted an investigation into  
22 the validity and enforceability of these intercompany  
23 claims, the potential causes of action that Gawker Media  
24 might be able to assert against Gawker Hungary, and that  
25 although it determined -- that is Opportune determined and

1 the debtors determined that they believed that the debt was  
2 good, valid, and properly enforceable in the full amount of  
3 \$23 million, as part of the sale proceeds allocation  
4 settlement, a settlement with Gawker Hungary, the  
5 intercompany debt was recharacterized, importantly, to an  
6 approximate \$19 million. That's not a write off. Taxes,  
7 we're obviously very concerned about taxes. So it's  
8 important that it was recharacterized to \$19 million.

9 Under the plan as proposed, it was proposed that  
10 Gawker Hungary would then be paid no more than 16 million on  
11 account of its intercompany claim by Gawker Media, leaving a  
12 balance of \$3 million to be paid if and only if the  
13 unsecured creditors of Gawker Media were paid in full.  
14 However, Mr. Holden would also testify that as a result of  
15 establishing conservative reserves for plan purposes --  
16 sources and uses of cash, conservative returns with respect  
17 to priority tax claims and tax claims and administrative  
18 expenses, that currently Gawker Hungary will likely only be  
19 receiving \$10 million on the effective date of the plan,  
20 hopeful that it would receive 16. That is part of the  
21 settlement that Gawker Hungary had agreed to subordinate, as  
22 mentioned, the additional \$3 million in addition to the 16.

23 Mr. Holden would also --

24 THE COURT: How much is Gawker Hungary  
25 subordinating?

1                   MR. GALARDI: Three of 16, but now it's really 9  
2 of the 16 at least, Your Honor.

3                   THE COURT: It's getting -- okay.

4                   MR. GALARDI: Okay? And, Your Honor, with respect  
5 to this, because of circumstances with respect to taxes and  
6 ability to pay taxes, Mr. Holden would also testify that if  
7 the plan should not go effective before the end of the year,  
8 he would like authority to distribute 5 of the \$10 million  
9 before the year ends so that Gawker Hungary can pay certain  
10 tax obligations that need to be paid before year end. In  
11 that regard, Mr. Holden would testify that upon the  
12 consummation of the sale, all assets were put into a bank  
13 account in the name of Gawker Media, but that, in part,  
14 because of the tax implications, it would be best to  
15 transfer funds up to \$5 million by year end through the  
16 intercompany as a partial pay down.

17                  Mr. Holden would then testify that this  
18 intercompany settlement with Hungary was part of the arm's  
19 length negotiations among the parties with respect to the  
20 overall sale proceeds allocation and with respect to the  
21 payment of the creditors' claims. That the settlement  
22 enables the unsecured creditors of Gawker Media to receive  
23 more than they might otherwise receive in the Chapter 11  
24 cases. That that is a result of, among other things, tax  
25 implications, that the settlement was entered into based

1       upon, among other things, the estimated cost of litigation  
2       between the estates, a consideration of the likelihood of  
3       prevailing on the litigation, and the effect of the timing  
4       of the litigation on the ultimate distribution of proceeds  
5       to unsecured creditors.

6                   So Mr. Holden would opine that the settlement,  
7       both of the sale proceeds, as well as the Gawker Hungary  
8       payment on the intercompany claim should be approved as fair  
9       and equitable and in the best interest of all of the  
10      debtors' estates.

11                  Turning now to the other intercompany settlement  
12       between GMGI and Gawker Media. With respect to that  
13       settlement, Mr. Holden would testify that a result of the  
14       sale proceeds and the Gawker Media/Gawker Hungary  
15       settlements, GMI -- GMGI is expected to receive a  
16       significant distribution of cash, likely in excess of \$30  
17       million. Your Honor, I'll stop there. It's \$30 million as  
18       opposed to the liquidation analysis because of that \$9  
19       million drop that I talked about on the intercompany and the  
20       reserves being established at Gawker Media.

21                  The committee and the other parties had also  
22       raised concerns (indiscernible) of claims and causes of  
23       action that Gawker Media might have against GMGI and its  
24       officers and directors, including breaches of fiduciary duty  
25       and impermissible dividends. But the debtors and the

1       advisors determined that no such causes of action existed  
2       and that even if such actions existed, the unsecured  
3       creditors of Gawker Media likely would be paid in full and  
4       then suffer no damages. That, nonetheless, to provide some  
5       consideration in exchange for the releases of the GMGI, as  
6       well as their board members, and to otherwise avoid costly  
7       and time consuming litigation that might provide no material  
8       benefit to Gawker Media estate and its creditors.

9                   GMGI agreed to provide the unsecured creditors of  
10       Gawker Media with a \$2 million fully funded guarantee. Mr.  
11       Holden would then testify that the GMGI settlement is fair  
12       and reasonable, and that the potential claims and causes of  
13       action that Gawker Media may have against GMGI but that the  
14       GMGI guarantee, which is a settlement, is the result of  
15       arm's length negotiations among various parties, including  
16       the committee, Mr. Bollea, the equity holders.

17                   THE COURT: What is the \$2 million guaranteeing?  
18                   What's the debt that's being guaranteed?

19                   MR. GALARDI: The unsecured claims, okay -- and  
20       when we had a lot of unsecured claims and we didn't know the  
21       full amount of them, right, there was the concern -- Your  
22       Honor expressed it and the committee expressed it, that if  
23       we only put \$3.75 million of cash aside for those claims,  
24       they may exceed that number.

25                   So one of the things was to make that 3.75 5.75.

1 GMGI gave a guarantee that if the claims actually exceeded  
2 that 3.75, then you'd have another \$2 million of cash funded  
3 and it would never be distributed to the unsecured creditors  
4 -- to the equity. And that --

5 THE COURT: Is that guarantee necessary now in  
6 light of the various settlements?

7 MR. GALARDI: I don't believe it's going to be  
8 necessary, but we're going to keep the money there and I'll  
9 explain that for writers and other issues, Your Honor. But  
10 in light of the reserve numbers and where the claims came  
11 out, I think we're going to be well below that number.

12 THE COURT: Okay.

13 MR. GALARDI: That the settling -- this issue  
14 saves significant costs and expenses and that the settlement  
15 reflects Gawker Media receiving at least its lowest possible  
16 recover in an intercompany litigation, and likely more.

17 Your Honor, now I'd like to turn for Mr. Holden to  
18 proffer with respect to the specific settlements that are in  
19 the plan and then I can also do the other settlements that I  
20 mentioned. With respect to the plan settlements with  
21 specific creditors, Mr. Holden would testify that as part of  
22 the plan and negotiations, the debtors entered into three  
23 settlements with three individual creditors. Those  
24 creditors are Mr. Bollea, Ms. Terrill, and Mr. -- and  
25 Dr. Ayyadurai. That those three -- Mr. Holden would testify

1 that those three creditors are members of the creditors  
2 committee and, as such, and in their individual capacity,  
3 have been actively involved in the cases. That these three  
4 creditors have common outside counsel of Charles Harter, but  
5 not the same bankruptcy counsel, although Terrill and Dr.  
6 Ayyadurai share bankruptcy counsel. That all three  
7 creditors had prepetition litigation, but only Mr. Bollea's  
8 litigation had proceeded to judgment, and that the debtors  
9 believed that all three litigations, and possibly others,  
10 were financed by Peter Thiel, a Silicon Valley billionaire,  
11 whom the debtors sought 2004 discovery and have been held in  
12 abeyance since the entry of the settled -- the initial  
13 settlement agreements.

14 That as a result of those creditors' activities in  
15 the cases, the concerns about the litigation financing, and  
16 the status of the underlying proceedings and claims, and  
17 other considerations the debtors determined to proceed with  
18 settlement negotiations with those parties, that in that  
19 regard, the plaintiffs creditors were different in material  
20 respects from other creditors, such as Mr. Huon,  
21 Mr. Johnson, Got News, XP Vehicle, and Williams, who had  
22 also filed large, unsecured claims based on defamation and  
23 other matters.

24 In particular, debtors have already -- Mr. Holden  
25 would testify and particularly the debtors had already

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1 received favorable judgments on Wan and Johnson, upon which  
2 they intended to rest and didn't want to proceed with  
3 negotiations on those. With --

4 THE COURT: Is it favorable judgment with respect  
5 to Johnson? Williams?

6 MR. GALARDI: Williams, I'm sorry. Thank you for  
7 correcting me, Your Honor. Thank you for correcting my  
8 proffer of Mr. --

9 THE COURT: Mr. Johnson's attorney got a little  
10 nervous there. He missed that one.

11 MR. GALARDI: Thank you. That's right. That XP  
12 Vehicles was an unknown claim at the filing of the  
13 bankruptcy case and other than after filing an objection to  
14 that claim had we heard -- had not heard much from XP  
15 Vehicles.

16 And finally, with respect to Mr. Johnson and Got  
17 News, there had been litigation commenced that was  
18 dismissed, but ultimately refiled in California as of the  
19 petition date, but they had not served the complaint. And  
20 despite the action having been on the docket for about six  
21 months or more, before the bankruptcy and not taken part in  
22 the bankruptcy cases other than to file proofs of claims.

23 That the settlement negotiations with Bollea and  
24 Terrill and Dr. Ayyadurai took place over three days near  
25 the end of October in the offices of Ropes & Gray, and that

1 prior to those meetings, there were settlement negotiations  
2 with those parties directly, with the creditor's committee,  
3 and certain other third parties regarding the settlement of  
4 those claims either individually or collectively. That  
5 there were back and forth offers being made directly through  
6 counsel from the debtors, the creditors, and the times  
7 communications through third parties. And that Mr. Holden  
8 did, in fact, play a part in the negotiations of the  
9 settlement. That the debtors were concerned about the cost  
10 of litigation, that the debtors were concerned of any  
11 judgments, whether even favorable with respect to Ayyadurai  
12 and Terrill would be subject to appear given the financing,  
13 and that the other defendants -- there were other defendants  
14 that the debtors were also concerned about, namely the  
15 writers and other editors of their companies that were  
16 subject to these litigations, including Mr. Denton and  
17 Mr. Daulerio.

18 In that regard, the company in negotiating the  
19 settlement was concerned about the time that it would take  
20 to litigate these settlements, the appeals that would be  
21 involved in these litigations, and the impact that it would  
22 have on confirming a plan of reorganization and making a  
23 distribution. That the debtors had considered lists and  
24 contacts of the plan allocation and wanted to resolve those  
25 allocation issues, along with making sure that there were

1 payments both for these claims and that the claims were, in  
2 fact -- and the claims of other general, unsecured  
3 creditors.

4 Mr. Holden would further testify that, with  
5 respect to Mr. Bollea, that the debtor has negotiated a  
6 settlement that the debtors believed was too high, because  
7 they believed that they would prevail on the appeal. And  
8 Mr. Holden would further testify that, based on Mr. Bollea's  
9 statements and statements of his counsel, that the Bollea  
10 settlement was too low in light of the fact that Mr. Bollea  
11 had been successful in obtaining \$115 million compensatory  
12 damage judgment as well as a \$15 million punitive judgment  
13 against the debtors as well as punitive judgments against  
14 Mr. Denton in the amount of \$10 million and 1 against Mr.  
15 Daulerio in the amount of \$100,000.

16 Mr. Holden would then testify that the settlement  
17 with Mr. Bollea was very favorable to the debtors in the  
18 following respects. First, absent an appeal, the judgment  
19 could not be overturned, and the appeal would be taken place  
20 in the Florida court. And the debtors are paying \$31  
21 million on a \$115 million judgment.

22 Two, the debtors were able to have the individual  
23 defendants' judgments also settled by the payment of \$31  
24 million, except with respect to any potential punitive  
25 damage claims against Mr. Denton and against Mr. Daulerio.

1 With respect to the punitive damage claims with respect to  
2 Mr. Denton and Mr. Daulerio, the debtors have negotiated a  
3 cooperation agreement whereby if they cooperated with  
4 Mr. Bollea in securing cooperation agreements with  
5 Mr. Denton and Mr. Daulerio, those defendants would not have  
6 to pay any amount of damages on punitive damage claims and  
7 that they simply would cooperate and receive mutual  
8 releases, which in the instance of Mr. Denton would also  
9 facilitate a resolution of his own bankruptcy case.

10 I'm pleased to say that as I don't have the  
11 document papers, but it has been reported to me by both  
12 Mr. Denton's counsel, by Mr. Bollea's counsel, and  
13 Mr. Daulerio's counsel that all of those cooperation  
14 agreements, as we stand here today, have, in fact, been  
15 executed and that those settlements will be, in Mr. Denton's  
16 case, separately approved, hopefully, in our case so there  
17 will be no further litigation with respect to the underlying  
18 judgment. And in addition, as part of the settlement, as  
19 Mr. Holden would testify, there was another litigation in  
20 which only the company was named. And it only began in the  
21 beginning, what we call the Bollea II litigation, that with  
22 respect to the Bollea II litigation, that is also settled  
23 for no additional payment to Mr. Bollea.

24 And Mr. Bollea, in the settlement agreement, which  
25 is attached in the -- in the plan supplement -- and there's

1 a couple little changes that have been made, but nothing  
2 substantive. That as part of that settlement, Mr. Bollea  
3 has also agreed not to name threatened third parties,  
4 including Mr. Daulerio and Mr. Denton and Ms. Dietrick, who  
5 is the general counsel, that those parties would not be  
6 named in the litigation. That does not, obviously,  
7 preclude, to some extent, other parties bringing them in for  
8 our discovery. We'll talk about that when I talk about the  
9 indemnification.

10 In addition, Mr. Bollea has agreed to receive his  
11 share of 45 percent of what we call the Gawker Media  
12 contingent proceeds account. That account is to be funded  
13 by proceeds, if any, from the actions that the debtors may  
14 take with respect to third parties and with respect to the  
15 sale of gawker.com. That was going to be shared with any  
16 other unsecured creditor, Your Honor. But as a result of  
17 the other settlements, there will be no other unsecured  
18 creditors sharing in that 45 percent. So Mr. Bollea will be  
19 the sole beneficiary of the contingent proceeds account.

20 You can be assured that we do not believe that  
21 that will make the 31. We gave them an unsecured claim of  
22 \$84 million. It's irrelevant at this point, but we do not  
23 believe the assets in that account are anywhere near \$84  
24 million. And he will not be receiving anything above  
25 payment in full. In fact, we believe the proceeds are

1 probably far less than that.

2 As Mr. Holden would testify, he believes that the  
3 cost and expense of the litigation with respect to Bollea,  
4 the cost and expense with respect to the Bollea II  
5 litigation could range anywhere from 1 to \$10 million and  
6 would only delay the distributions. And while the company  
7 believes that it could ultimately prevail on appeal and  
8 still does believe it could prevail on appeal -- and I know  
9 Mr. Denton and Mr. Daulerio still believe that they could  
10 prevail on appeal -- it was time to resolve the settlement  
11 and put this matter behind us for the benefit of the  
12 creditors and the rest of the estate. That will be  
13 Mr. Holden's testimony with respect to the settlement with  
14 Mr. Bollea.

15 I would say --

16 THE COURT: Can I ask you a question?

17 MR. GALARDI: Sure.

18 THE COURT: All the creditors are being paid in  
19 full, right?

20 MR. GALARDI: Correct.

21 THE COURT: So this is essentially a dispute  
22 between equity --

23 MR. GALARDI: Correct.

24 THE COURT: -- and the litigants at this point?

25 MR. GALARDI: And it has been, Your Honor, for the

1 most part, since we received the sale proceeds. And I will  
2 say from the -- and it really came down to the allocation  
3 issue, to a large extent, because of the allocation -- I'll  
4 put it on the record that the allocation had been two-  
5 thirds, one-third to Gawker Hungary, those creditors could  
6 not have been paid in full. And frankly, had we not had a  
7 successful auction, this would have been an even uglier case  
8 from all parties' concern.

9 THE COURT: Okay.

10 MR. GALARDI: And in regard to the settlements,  
11 Your Honor, and since you raised the point, I'll make it  
12 clear. All of these settlements -- one, the committee has  
13 been the guardian of the Gawker Media unsecured creditors  
14 because of the potential issues. Although we don't believe  
15 we ever had any conflicts.

16 And with respect to the interests of the preferred  
17 shareholders, we have capped the preferred shareholders, who  
18 include Mr. Denton as the largest holder, Columbus Nova, who  
19 is one of the large holders, Mr. Plunkett (ph), who is one  
20 of the large secured involved in these negotiations. And in  
21 each time when we had the settlement conversations, we  
22 noticed all of the parties -- and Mr. Tillman has been  
23 involved bringing everybody together without -- and  
24 Mr. Holden have been involved. That basically, on that  
25 basis, we believe that the Bollea settlement should be

1 approved.

2 Mr. Holden would also note -- and again, a  
3 slightly different request than I'm sure Your Honor has  
4 received on other confirmations of plan. And I would say  
5 this with respect to Bollea, with respect to Terrill, with  
6 respect to Ayyadurai. In the event that the plan does not  
7 go effective by December 31st, Mr. Holden would like the  
8 authority to make payments to Mr. Bollea on the settlement.  
9 And I know Mr. Bollea's counsel doesn't object to that in  
10 the amount of \$31 million before year-end.

11 The simple basis for that, as Mr. Holden would  
12 testify, is that because the game (ph) occurred in 2016, the  
13 payment occurring in 2016 will avoid certain tax  
14 implications and then having to refile taxes in subsequent  
15 years. So with respect to these payments, that's why one of  
16 the reasons why it was so important, as Mr. Holden would  
17 testify, that the reserves in all of this, all the amounts  
18 be set at the cap so no one will be prejudiced by the early  
19 payments. We're going to ask for authority to make certain  
20 of those payments actually immediately before or maybe a  
21 week or two before going effective on the plan of  
22 reorganization.

23 With respect to the Terrill settlement, Your  
24 Honor, Mr. Holden would also testify that he participated  
25 and was aware of and approved, along with Mr. Tillman, the

1 settlement with Ms. Terrill. In that regard, Mr. Holden  
2 would testify that those settlement conversations also  
3 occurred in New York in the last two weeks of October and at  
4 the same time that the Bollea settlements were negotiated.  
5 and Mr. Holden would testify that Mr. Harder (ph) was  
6 involved in those negotiations. He was the common counsel  
7 to the three defendants -- three plaintiffs.

8 Notwithstanding the fact that those parties were  
9 all present in the Ropes offices in New York, those  
10 conversations and those settlement negotiations with  
11 Ms. Terrill were held separately from the negotiations with  
12 Mr. Bollea. Mr. Bollea had additional counsel, and  
13 Mr. Harder was only tangentially involved. Mr. Taybeck (ph)  
14 was involved primarily on behalf of Mr. Bollea.

15 In those conversations with Mr. Harder with  
16 respect to Terrill and those conversations and similarly  
17 with Mr. -- Dr. Ayyadurai were held separately and as the  
18 result of those conversations, separately negotiated  
19 agreements with certain different terms in those agreements.  
20 And they were negotiated apart from and the settlement with  
21 Mr. Bollea. Mr. Holden would testify that it was not a  
22 package deal, that there was not a we'll pay you x and you  
23 carve up how you get it paid. It was actually a specific  
24 back-and-forth negotiation with Mr. Bollea that was actually  
25 a back-and-forth negotiation with counsel to Ms. Terrill and

1 a back-and-forth negotiation with counsel to Dr. Ayyadurai.  
2  
3 That those settlements were -- that those  
4 settlement negotiations reflected many offers and counter-  
5 offers; that Mr. Tillman was involved in those discussions  
6 and that both parties, as I mentioned, will resolve in  
7 litigation. (Indiscernible) to resolve the litigations with  
8 Ms. Terrill in particular for the payment of \$500,000, the  
9 debtors and Mr. Holden and Mr. Tillman considered a number of  
10 factors, including, one, the costs and expense of  
11 litigation; two, the fact that although a pending motion  
12 could dismiss this, there was a pending motion to dismiss in  
13 the underlying Newark action, that there was a list (ph)  
14 that the debtors would lose that motion to dismiss and that,  
15 even if the debtors succeeded in that motion, based upon the  
16 weeks that Mr. Thiel was financing that litigation, that it  
17 would inevitably be an appeal of that litigation. And if  
18 there was an appeal, there would be a chance of reversal.  
19 And if there was a trial, that it would be a costly and  
20 time-consuming litigation.

21  
22 Thus, in connection with the Terrill settlement,  
23 the debtors believed that again, there was nothing wrong  
24 with what they did, that they did not defame Ms. Terrill,  
25 and that they would fight the substance of those  
litigations. The debtors determined that it was in their  
best interests to settle that litigation for the payment of

1       \$500,000. As part of that settlement, the debtors also  
2       agreed to cooperate to obtain cooperation agreements from  
3       the authors or writers that were named in that lawsuit,  
4       including Mr. Denton, Mr. Cook and Mr. Biddle.

5           Unfortunately, I am unable to report today that  
6       those cooperation agreements have all been entered into. I  
7       believe Mr. Denton has one, but I'm not sure. I will leave  
8       that to his counsel.

9           That said, that litigation can then -- so as a  
10       result of that litigation, the debtors have been able to  
11       resolve the Terrill claim for compensatory damages and  
12       punitive damages against the debtors, full compensatory  
13       damages against all of the other defendants, leaving only  
14       the potential of a punitive damage judgment, should  
15       Ms. Terrill decide to proceed in that litigation against the  
16       writers and potentially Mr. Denton, since I don't know as we  
17       stand here right now whether he has received his release.  
18       But I believe he has.

19           With respect to that --

20           THE COURT: So are those settlements final, or are  
21       you waiting to sign these cooperation agreements?

22           MR. GALARDI: Your Honor, from the debtors'  
23       standpoint, our settlement is final. It doesn't -- it's not  
24       conditioned on them signing that. With respect to the  
25       individuals and the future of the litigation, that is not

1 final as I stand here today. They may still end up with  
2 those agreements, as they have in Mr. Ayyadurai's case.

3 THE COURT: But does that prevent the debtor from  
4 confirming its plan?

5 MR. GALARDI: No, no. In fact, part of the  
6 settlement negotiation was specifically that there was no  
7 requirement, simply a duty to cooperate, which we've not  
8 heard anything that we did anything other than cooperate.  
9 Whether it would be friendly cooperation or threatened  
10 cooperation, it was cooperation, as Mr. Holden would  
11 testify.

12 With respect to Dr. Ayyadurai's claims, Mr. Holden  
13 would also testify with respect to Dr. Ayyadurai that again,  
14 those settlement conversations, again, were taken place both  
15 prior to the meetings in New York and also during the  
16 meetings in New York and also subsequent to the meetings in  
17 New York, that during the meetings in New York, that the  
18 parties met over the course of three days, that those  
19 settlement negotiations were separate and apart from the  
20 negotiations with Mr. Bollea, that those negotiations went  
21 back and forth regarding offers and counter-offers, that  
22 those settlement negotiations were conducted at arms'  
23 length, that Dr. Ayyadurai was represented by Mr. Harder,  
24 who was independently negotiating the amounts for Dr.  
25 Ayyadurai.

1                   That as part of those settlements, again, the  
2 debtor considered, one, the costs of litigation; two, the  
3 likelihood that it would prevail in its pending motion to  
4 dismiss; three, the fact that even if it were to prevail in  
5 the motion to dismiss, given the potential financing that we  
6 -- that the debtors believe that Peter Thiel was providing,  
7 that there would be an appeal of that litigation. The  
8 appeal itself would be expensive litigation. And that, in  
9 fact, if they did not prevail on the motion to dismiss, that  
10 the litigation would be costly.

11                  The debtors also considered the likelihood of  
12 success. Though the debtors believed that there was no  
13 likelihood of success with respect to Mr. Ayyadurai, counsel  
14 to Dr. Ayyadurai did, in fact, provide his position with  
15 respect to why Dr. Ayyadurai may, in fact, prevail in those  
16 litigations. As a result of those back-and-forth  
17 negotiations, the consideration of costs, the debtors  
18 determined that settling the litigation with Dr. Ayyadurai  
19 in the amount of \$750,000, again, which amount the debtors  
20 would like to pay on or before December 31st of this year,  
21 2016 for the reasons that Mr. Holden had, in proper  
22 testimony with respect to the tax savings.

23                  My understanding and part of that settlement  
24 agreement was also that the debtors negotiate cooperation  
25 agreements with Dr. Ayyadurai on behalf of Dr. Ayyadurai --

1       between Dr. Ayyadurai and Mr.s Biddle and Cook and that my  
2       understanding is that those agreements have, in fact, been  
3       reached. And I believe Mr. Goldman, who is counsel here  
4       today, has advised me that with respect to Dr. Ayyadurai,  
5       the parties have resolved all of their issues.

6               With respect to all of the three -- those three  
7       creditor settlements, Your Honor, all of those settlements  
8       had a specific provision in it with respect to content that  
9       was on either the websites or in the possession of the  
10       debtors. With respect to all of that content, the debtors  
11       have agreed to either return or quit claim any such content  
12       back to the plaintiffs in that action. With respect to that  
13       content, Mr. Holden would testify that, indeed, that  
14       content, he does not believe, has any value to the estate.  
15       But, in fact, it would be detrimental to the estate and  
16       would not enhance the sale of the value of gawker.com.  
17       Indeed, anybody who would acquire gawker.com or that content  
18       could, could -- I won't say will be -- could be subject to a  
19       republication risk of that content and therefore, subject  
20       themselves to litigation.

21               So in valuing the settlement, the fact that the  
22       debtors looked at that content, looked at the fact that the  
23       parties were going to pursue that content, possibly pursue  
24       republication arguments as they had even pursued with  
25       respect to the successor Unimoda (ph), Mr. Holden would

1 testify that he believes that in giving that content and  
2 quit claiming that content that he was giving no valuable  
3 estate to those creditors in addition to the cash component  
4 of those settlements.

5 Your Honor, the other settlement that Dr. -- that  
6 Mr. Holden would testify is the settlement with -- I call  
7 them Columbus Nova, but it is the second lien they call the  
8 settlement that is set forth in the plan. And it is a  
9 secured claim. Again, Mr. Holden would testify that he  
10 participated in settlement negotiations and meetings with,  
11 I'll call them, Columbus Nova with respect to the make-whole  
12 plan. Mr. Holden would testify that, upon the consummation  
13 of the sale, the debtors paid Columbus Nova the full amount  
14 of the outstanding debt, approximately \$15 million; fees  
15 with respect to that debt, and default interest with respect  
16 to that debt, leaving only the make whole -- what's called  
17 the make-whole claim of a 25 percent amount in addition to  
18 the amounts that I just listed.

19 Mr. Holden would testify that the debtors raised  
20 concerns regarding the belief (ph) that that extra 25  
21 percent would be punitive and considered that they could  
22 possibly subordinate it and, if not eliminate it,  
23 subordinate it and at least subordinate it to all claims  
24 against all the estates but still senior to the  
25 (indiscernible). In fact, Mr. Holden would testify that in

1 that regard, considered that the loan had allowed the equity  
2 to continue to finance the litigation against Bollea and  
3 also to be able to help finance these cases and therefore,  
4 at worst, that they would be subordinated to the claims.

5 With respect to that settlement, what Mr. Holden  
6 would testify is that, as a result of those negotiations,  
7 Columbus Nova agreed to payment of \$500,000 from each of the  
8 debtors on the effective date and then agreed to subordinate  
9 the balance of their payment of 750 of each of the entities  
10 until all of the creditors of those entities were paid in  
11 full. At the time, obviously, Your Honor, Mr. Holden would  
12 testify that Gawker Media would -- I mean, Gawker Hungary  
13 would be able to pay its \$750,000. But at the time that  
14 settlement was negotiated, there was still a concern that  
15 the debtors would not be able to pay all of the unsecured  
16 creditors at Gawker Media and might not be able to pay all  
17 of the unsecured creditors of GMGI because of the  
18 indemnification obligations.

19 As a result, Columbus Nova agreed to subordinate  
20 that claim, wasn't impaired, and voted to accept the plan.  
21 And the only addition to that was that, as part of and prior  
22 to the effective date, the debtors have agreed to pay any  
23 accrued and unpaid attorneys' fees at Columbus Nova before  
24 year-end as part of the settlement. Mr. Holden would then  
25 testify that, based on the probability of a litigation

1 regarding the make-whole, that based upon the costs and  
2 expenses of such litigation and the amount that was at risk  
3 in that litigation, about \$3.75 million, that he believes  
4 that the settlement of that litigation was in the best  
5 interests of the debtors because such litigation in that  
6 settlement did, in fact, provide \$750,000 that might have  
7 been used to top off the unsecured claims at Gawker Media  
8 and that they would delay the payment on the GMGI claim in  
9 the event that there were large indemnification claims at  
10 GMGI. So Mr. Holden would ask for approval of that  
11 settlement.

12 Your Honor, what I turn to --

13 THE COURT: What about the Mitch Williams  
14 settlement?

15 MR. GALARDI: Okay, I was going to do that last,  
16 and we'll do that.

17 THE COURT: All right.

18 MR. GALARDI: With respect to Mr. Williams, what  
19 Mr. Holden would testify is the following. That the debtors  
20 have filed an objection to the claim of Mr. Williams, that  
21 Mr. Williams, in response to that, as well as to estimate  
22 that claim, that Mr. Holden would testify that with respect  
23 to Williams, the debtors' position was that he had no claim  
24 because the New Jersey Court had granted summary judgment  
25 and motion to dismiss with respect to all of his claims.

1 Mr. Williams, on the other hand, was, as Your Honor is  
2 aware, filed a motion to lift stay to bring -- to pursue an  
3 appeal arguing that that summary judgment motion was  
4 improvidently granted and take an appeal with respect to  
5 that litigation.

6 With respect to the litigation itself, the debtors  
7 have agreed to settle the (indiscernible) litigation on the  
8 following terms. The debtors have agreed to pay a total  
9 consideration to Mr. Williams of \$125,000. With respect to  
10 that \$125,000, Mr. Holden would testify that, in  
11 conversations with the insurance carriers, he and the  
12 insurance carriers believed that the costs of the appeal  
13 alone, leaving aside any subsequent trial, would range  
14 anywhere from 75,000 to \$125,000.

15 In those conversations, the insurance counsel  
16 agreed to reimburse or pay to Mr. Williams, depending upon  
17 the timing, 100,000 of the \$125,000 judgment. In addition  
18 then, the remaining \$25,000 we would allow Mr. Williams to  
19 elect convenience class treatment, which we had offered and  
20 paid from the estate \$25,000. As part of the settlement,  
21 the insurance carriers also agreed, without us having to put  
22 in invoices, that they would reimburse Ropes & Gray 25 --  
23 would reimburse the estate for any fees that Ropes & Gray  
24 expended on contesting the Williams' claim as a result of  
25 our bringing it to a settlement.

1                   And as a result, the estates will take that  
2                   \$25,000 and if necessary -- it may not be necessary now --  
3                   take that \$25,000 and put it in the unsecured creditors  
4                   reserve. Therefore, from a settlement standpoint,  
5                   Mr. Holden would testify that the Williams' settlement has  
6                   no net effect on any recoveries to the unsecured creditors,  
7                   that the estate avoids the costs of litigation, some of  
8                   which, under insurance rates, may not, in fact, be  
9                   reimbursed, that they are being fully reimbursed for 100,000  
10                  of that and that, even with respect to the 25,000 with  
11                  respect to Mr. Williams, that the debtors are receiving and  
12                  the estates and the unsecured creditors are receiving the  
13                  benefit of the additional 25 that will be reimbursed to the  
14                  estate for the Ropes & Gray's fees in litigating that.

15                  Mr. Williams has agreed that with respect to --

16                  THE COURT: So the estate's paying \$25,000 either  
17                  to you or to Mr. Williams, right?

18                  MR. GALARDI: Yes, but they're getting that  
19                  reimbursed. Yes, there's a net zero to the estate. But the  
20                  -- we were looking at it from the unsecured creditors'  
21                  standpoint, reimburse that estate. That's true.

22                  With respect to -- I'm trying to think. Oh, with  
23                  respect to the Williams' litigation, upon payment of that  
24                  amount, Mr. Williams has agreed to dismiss his litigation.  
25                  Mr. Williams will not amend the litigation. Mr. Williams

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1 will not pursue in the litigation the various John Does that  
2 were possible writers, authors, or editors of articles which  
3 he may have pursued. There is no agreement to provide back  
4 the content that was put on the website. There was not a  
5 republication risk. And Mr. Holden would request that,  
6 based on the costs of litigation, based upon the likelihood  
7 or prevailing, based upon the insurance recovery, based upon  
8 the fact that no unsecured creditors are actually prejudiced  
9 by the recoveries to Mr. Williams, and based upon the facts  
10 that he believes that this is a fair and reasonable  
11 settlement and should be approved by Your Honor.

12 Your Honor, I might as well take up Mr. Meanith  
13 Huon's now.

14 THE COURT: Yes.

15 MR. GALARDI: While we may hear more about this,  
16 he did want me to say that he wanted to be on, but he didn't  
17 want to pay for two court calls. And he'll be on on the  
18 15th.

19 With respect to Mr. Huon, Your Honor may recall  
20 that the debtors had filed an objection to Mr. Huon's  
21 claims, that those claims -- on the basis that those claims  
22 have been disallowed on motions to dismiss by the Illinois  
23 -- I believe it's the state court. No, it's the federal  
24 court.

25 THE COURT: It's the district court.

1 MR. GALARDI: It's the district court, yes, Your  
2 Honor. And that he had taken an appeal as of the  
3 commencement of these cases to the Seventh Circuit. With  
4 respect to the Seventh Circuit, right before his deadline to  
5 respond to our objection to his claim, the Seventh Circuit  
6 reversed on one of those counts finding that there was not  
7 -- it was not proper to grant a motion to dismiss on what  
8 we've referred to as the single comment claim. Mr. Huon's  
9 single comment claim rested on the fact that either there  
10 was at least an evidentiary issue or a factual issue to  
11 determine whether or not an employee did that and whether or  
12 not the Gawker Media advertising or incentive policies were  
13 such that there was an actionable conduct.

21                   Frankly, the debtors wanted to oppose Mr. Huon on  
22 that, because it does raise interesting First Amendment  
23 issues in the district court as to whether or not you can be  
24 liable for comments, whether or not the policy.  
25 Notwithstanding that, the debtors determined that it was

1 better not to spend the amount on the litigation, as the  
2 debtors considered the litigation, in the event that it went  
3 forth in the -- in the district court there, it was going to  
4 be a factual litigation with respect to tracking down  
5 employees. And that would have been expensive litigation.  
6 Even to the extent that Your Honor had jurisdiction, which  
7 we believed Your Honor had, Mr. Huon believed that he would  
8 take an appeal of that jurisdiction, and that would have  
9 cost.

10 If Mr. Huon had proceeded pro se and has actually  
11 been quite successful in certain pro se matters --

12 THE COURT: Well, he's a lawyer.

13 MR. GALARDI: Yes. Well, -- and so, he has  
14 actually proceeded pro hoc. You're right, Your Honor and  
15 has been successful in those litigations and made clear that  
16 he was going to take an appeal. Based on the costs and  
17 expenses of the appeals, the issues that were raised, and  
18 with respect to the underlying issue, which could be a  
19 factual issue, the debtors determined that it was better to  
20 offer Mr. Huon a settlement.

21 Mr. Huon accepted a settlement. It was \$100,000.  
22 I think he'll testify. And he'll say 99,999. We won't go  
23 into the reasons, but we're going to say \$100,000 settlement  
24 for Mr. Huon with respect to his claim.

25 The debtors believe that entering into that

1 settlement to resolve the claims objection, the estimation,  
2 the Seventh Circuit litigation, all of the claims against  
3 the writers and other people that were named in the long  
4 litigation, including board members and former board  
5 members, is a reasonable settlement based upon the  
6 likelihood of success, the costs and expense of litigation,  
7 the likelihood of prevailing, and any objections that we may  
8 have had with respect to the reserves of the debtors under  
9 the plan. So we would ask Your Honor to approve the  
10 settlement with respect to Mr. Huon as well.

11 Your Honor, I think -- I think maybe it would be  
12 good to just put on some evidence about the Gawker available  
13 assets so that you can, you know, make those findings. With  
14 respect to the Gawker available assets, Your Honor,  
15 Mr. Holden would testify that there are really three  
16 financial sources for the payment of unsecured claims.  
17 First is there is a Gawker unsecured claims reserve.

18 As Mr. Holden would testify, that unsecured claim  
19 reserve, after paying the Bollea settlement, after paying  
20 the Ayyadurai settlement, after paying the Terrill  
21 settlement, and after making any distribution on the inter-  
22 company claim would have been funded on the effective date  
23 in the amount of \$3.75 million. In addition, Mr. Holden  
24 would testify that in addition to those assets, as I had  
25 mentioned before, Columbus Nova was leaving \$750,000 behind

1 to pay the unsecured creditors. And those funds would have  
2 been funded on the effective date and not released unless  
3 and until Gawker Media unsecured creditors received payment  
4 in full.

5 Finally, Mr. Holden would also testify that, with  
6 respect to the GMGI guarantee, that GMGI agreed to fund up  
7 to \$2 million to pay unsecured claims if that first 3.75 and  
8 that next 750 were not paid in -- were not sufficient to pay  
9 in full the amount of those claims. That's what we would  
10 refer to and Mr. Holden would refer to as the Gawker  
11 available assets. In addition, Mr. Holden would testify  
12 that it was a requirement of the GMGI plan to fully fund in  
13 cash the Gawker -- the GMGI guarantee on the date. So all  
14 of these would have been funded in cash available to the  
15 unsecured creditors.

16 Mr. Holden would testify that one of the concerns,  
17 especially after finding out about the settlements with  
18 respect to the Bollea, Ayyadurai, and Terrill that the  
19 committee had raised was the concern that there would be  
20 adequate cash to pay the general unsecured creditors a  
21 Gawker Media in full, or at least the same percentage, if  
22 not a higher percentage than was being received by  
23 Mr. Bollea. As a result, these funds were established to  
24 pay the unsecured creditors, and there have been back-and-  
25 forth with the unsecured creditors committee during the

1 course of the cases and subsequent to the settlements to  
2 confirm that we believed and that they believed that the  
3 amounts were sufficient to fund and pay in full these  
4 claims, or at least pay a very high percentage, no higher --  
5 and no lower percentage than was paid to Mr. Bollea.

6 As a result of the settlements, Mr. Holden can  
7 testify as follows. That based upon his review of the base  
8 amount of the unsecured liquidated claims in these cases,  
9 there is about \$900,000 funded, liquidated, unsecured claims  
10 and that the reserve -- we're going to start subtracting  
11 numbers -- that the reserve will have funding available for  
12 each of those claims.

13 THE COURT: Did he include the two settlements?

14 MR. GALARDI: No, I'm going to include those, Your  
15 Honor. So we start with 900. Based upon a review --  
16 Mr. Holden would testify that, based on a review of the  
17 claims registry, he classified claims into essentially three  
18 groups of claims, Your Honor.

19 First, the liquidated -- well, more like the  
20 trade-payable type claims, where you may dispute amounts.  
21 But they were filed in a liquidated amount. They're not  
22 contingent. And they may be disputed as a rounding error,  
23 more or less. With respect to those claims, Mr. Holden  
24 would testify that there are about \$900,000 worth of those  
25 claims.

1                   Next, Mr. Holden would testify that, with respect  
2 to Mr. Daulerio, he was setting aside \$500,000 for the claim  
3 of Mr. Daulerio with respect to attorneys' fees that had  
4 been incurred to date. With respect to the balance of the  
5 writers and --

6                   THE COURT: That's an absolute cap, though, isn't  
7 it?

8                   MR. GALARDI: It is an absolute cap, right. So  
9 all of these are caps. We're taking people on their claim  
10 as a cap. We're taking the 500 as a cap. And as Your Honor  
11 may recall when I filed the estimation motion, which is late  
12 -- which is now going to be withdrawn, the way we were going  
13 to do the analysis is let's take all the caps and see what's  
14 left of the claims.

15                  THE COURT: Right.

16                  MR. GALARDI: So right now, it's a claim. So you  
17 have 900 plus the 500 for the --

18                  THE COURT: Daulerio.

19                  MR. GALARDI: -- Mr. Daulerio. Now, with respect  
20 to Mr. Williams, that settlement will have no effect on the  
21 numbers, because, as I said, they will be reimbursed and put  
22 into the proceeds by way of, one, the 100,000 that the  
23 insurance carrier is paying and, two, the 25 that will be  
24 reimbursed on fees. So that has no net effect on the  
25 reserve.

1                   As part of the Johnson settlement, the debtors  
2 have agreed to reserve, with respect to that, \$1.5 million,  
3 again a cap on recovery. So with --

4                   THE COURT: And Mr. Huon?

5                   MR. GALARDI: Mr. Huon's being paid 100 out of  
6 that reserve, Your Honor.

7                   (Pause)

8                   MR. GALARDI: So if my math is correct, which is  
9 always questionable, I have 900. I'll do Mr. Huon next.  
10 That brings it to a million and 500 for Mr. Daulerio.  
11 That's 1.5 million and a reserve for Mr. Johnson at GotNews  
12 at 1.5. So nearly of the 3.75 that's cash, we believe we  
13 have 750,000 more than is necessary to be able to pay all of  
14 the remaining unsecured claims in this case.

15                   THE COURT: Not counting the Columbus Nova  
16 subordination and the \$2 million guarantee?

17                   MR. GALARDI: Correct. So, in essence, if we go  
18 forward with the plan, Your Honor -- and I'm going to talk a  
19 little bit about the indemnification plan. Because in  
20 addition, there are other indemnification claims and defense  
21 costs it's possible that certain writers will have,  
22 depending upon Your Honor's ruling on the third party  
23 releases and also that Terrill matter that I mentioned.

24                   But, Your Honor, with respect to that, we believe  
25 all of the claims that are liquidated amount known as of

1 today -- and it's actually extended fees, which is really  
2 Mr. Daulerio. We have \$750,000 even at the first level in  
3 excess of what we will need to pay those claims.

4 Now, I would also like to now, with respect to  
5 Mr. Johnson's claim, Your Honor, to give Your Honor more  
6 comfort. It is our understanding and Mr. Holden would  
7 testify that we have had conversations with the insurance  
8 carrier. Mr. Johnson is now the remaining claim, with  
9 respect to one of the policies for which we have, in fact,  
10 received coverage for part of Mr. Johnson's proceedings  
11 before and that, between the first layer of coverage and the  
12 excess coverage, there is at least 1.1 million, 1.2 million  
13 remaining of coverage.

14 So with respect to that \$1.5 million reserve and  
15 the potential for settlement or otherwise, there is  
16 insurance coverage that will also give us a level of comfort  
17 with respect to that reserve. But again, the 1.5 is a cap,  
18 but I want Your Honor to understand that certain of the  
19 monies would then flow through to the inter-company claim  
20 and go back up to the parent.

21 Your Honor, so Mr. Holden would testify that, in  
22 his view, Gawker available assets are, in fact, based upon  
23 the settlements, based upon the reserves, and based upon the  
24 agreements, adequate to pay the Gawker Media unsecured  
25 claims in full on the effective date or upon their allowance

1 as soon as after. Your Honor will notice -- and we'd like  
2 to amend the plan in light of the settlements -- that one of  
3 the provisions -- and Mr. Holden would testify, but I'll  
4 (indiscernible) -- is that we are not going to make  
5 distributions until all of the claims were settled, because  
6 there were so many of them and we didn't want to do so.

7 One of the things that we think will be beneficial  
8 to, again, facilitate whatever settlements is instead of  
9 waiting now, since you have essentially independent  
10 reserves, to ask Your Honor to authorize us, in the plan  
11 administrator's discretion, to make those distributions as  
12 those settlements relieve (ph) instead of waiting for  
13 everybody to resolve.

14 THE COURT: Isn't the only unresolved claim at  
15 this point the Johnson GotNews?

16 MR. GALARDI: Again, I always preface this with  
17 Your Honor -- if Your Honor approves the third party  
18 releases, I believe that plus what the equity has agreed  
19 after conversations and what I'd like to have Your Honor  
20 authorize is -- I said there was \$750,000 left in the  
21 reserve. The debtors are standing by the writers and will  
22 stand by the writers in their right to defend against the  
23 Terrill litigation. We would like to make that money  
24 available for that one unique carve-out.

25 I'm seeing Terrill as essentially I opted out of

1 the releases type provision. And what we would do is, if  
2 they're going to opt out, we're not going to insist that  
3 those writers laid their claims on that. And we would like  
4 the administrator -- and we'd have the consent of the major  
5 equity people. Again, Mr. Denton's subject to your  
6 jurisdiction, but to be able to use that money.

7 And we're going to keep the 2 million out there a  
8 little bit. We don't think it's going to cost that much,  
9 but we don't think it's fair for the writers to continue to  
10 be litigating without costs waiving their claims, with that  
11 narrow exception.

12 I think I've gone through the media reserve. Your  
13 Honor, let's -- I think maybe now I can go on to the  
14 releases and cover all of your topics.

15 Your Honor, with respect to the debtor releases --  
16 and if we turn to the plan, which is -- and again, Your  
17 Honor, there have been no objections to these. In fact,  
18 there's been motions in support of these. But I think it is  
19 worth me explaining how do we work through these and then  
20 the testimony.

21 Your Honor, as is normal -- I have it on page 40,  
22 41, and 42 of the plan. On the filed version, I have 122,  
23 123, and 124, and 125 of 557. Are we together?

24 THE COURT: Yes.

25 MR. GALARDI: Okay. Your Honor, with respect to

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1 the provisions of the plan, I think that they are common but  
2 yet immediately tailored as -- I will put in a proffer.  
3  
4 9.01 is an injunction against asserting claims against the  
5 debtors. And I don't need to put Mr. Holden, because it's a  
6 legal question. I wanted Your Honor to be aware that this  
7 injunction is broader than the releases. It --

8 THE COURT: But, you know, this is a liquidating  
9 plan, and the debtor doesn't get a discharge. If the debtor  
10 doesn't get a discharge, why does the debtor get an  
11 injunction against the filing of claims? If somebody wants  
12 to go out and sue the debtor, I understand you get an  
13 injunction against interference with property that's going  
14 to be distributed under the plan. But if somebody wants to  
15 go out and get a -- you know, a judgment against a debtor,  
16 aren't they entitled to do that?

17 MR. GALARDI: Your Honor, you're 100 percent  
18 correct --

19 THE COURT: But --

20 MR. GALARDI: -- that they would be entitled to do  
21 that, but let me -- the reason that we have an injunction  
22 here -- and I think Your Honor could be, to some extent, the  
23 guardian of that injunction. And I think this is unique  
24 circumstances, which is why I wanted to bring this out  
25 because they go hand-in-hand with the third party releases.

THE COURT: Third party releases are something

1 else. All I'm saying is, as a debtor, this is a liquidating  
2 plan. The debtor is not entitled to a discharge under  
3 1141(d)(3). And if the debtor isn't entitled to a  
4 discharge, it's not entitled to a release, injunction,  
5 exoneration, limitation of liability, whatever you want to  
6 call it.

7 MR. GALARDI: But an injunction is different than  
8 a release or discharge, Your Honor. All it means is that  
9 they have to come back here before they pursue actions. If  
10 Your Honor has exactly the circumstances that you just  
11 raised, we have no doubt Your Honor will, in fact, dissolve  
12 the injunction.

13 THE COURT: So why put it in the plan?

14 MR. GALARDI: Because, Your Honor, there is a  
15 safeguard and an important point here. As we have mentioned  
16 in Mr. Holden's testimony, this injunction is partially to  
17 protect the writers and the other employees from lawsuits.  
18 For example -- and it goes to the third party releases. So  
19 I don't believe that they are at all completely separate.

20 Your Honor, the debtors and their writers and  
21 editors have written articles straight through the  
22 consummation of the sale process, as employees. As  
23 Mr. Holden would testify, there have been threats or  
24 requests to take down content throughout the cases up until  
25 the consummation of the sale. Your Honor, the only people

1 after the debtor gets -- we had a bar date. We get the  
2 protection of the bar date.

3 We've had administrative bar dates. We get the  
4 protection of those bar dates. That said, the average  
5 statute of limitations, depending upon the publication, is  
6 one to three years.

7 Your Honor has heard testimony that we want to get  
8 all this money out. And obviously, we have legal remedies  
9 against the editors and the writers for their contingent  
10 claims. You can do 502(c). You can do 502(e)(1).

11 But there is a significant risk, and we do have a  
12 pending 2004 motion that says that we want a third party  
13 release, we want the writers to have it. But in the event  
14 somebody wants to come to this court and pursue those  
15 parties or the debtors, we would like Your Honor to be the  
16 gatekeeper and determine on a case-by-case is this a cause  
17 of action that should, in fact, go forward. Your Honor can  
18 make that determination. We'll have the high standard to  
19 say no.

20 But if we determine, for example, that there is  
21 some other billionaire funding litigation against writers  
22 who generally don't have a ton of money but are only going  
23 against us for indemnification claims, we would like Your  
24 Honor to be the gatekeeper with respect to those actions.

25 THE COURT: Well, I can't -- assuming a third

1 party release is appropriate, why can't the third party  
2 release in favor of the writers be broader than the release  
3 or the discharge that the debtor is getting?

4 MR. GALARDI: Your Honor -- and I can hear  
5 Ms. Levine in the back and Mr. Goldman in the back.

6 Your Honor, if the third party release -- and we  
7 tried to narrow it because of the Second Circuit law in the  
8 third party release. As Your Honor will notice, if you go  
9 to Section 905, the third party release -- and there is an  
10 open issue here -- released employees and independent  
11 contractors. But it did have the qualifications -- and I  
12 know the U.S. Trustee would look -- was looking for this --  
13 gross negligence and willful misconduct.

14 THE COURT: It also says to the fullest extent  
15 provided by law.

16 MR. GALARDI: Right, but again, then we'll have  
17 arguments. Again, arguments that the writers and employees  
18 will have to make is okay, Your Honor --

19 THE COURT: Well, that's always an argument --  
20 that's always an argument that can be made down the road,  
21 though.

22 MR. GALARDI: Sure, but, Your Honor, why not have  
23 that argument before Your Honor and make somebody lift the  
24 injunction and make the argument before to interpret your  
25 own plan?

1                   THE COURT: I'm looking at the writers differently  
2 from the debtor. I think the law is very clear with the  
3 debtor.

4                   MR. GALARDI: And, Your Honor, --

5                   THE COURT: I suppose that somebody could sue the  
6 debtor but be precluded from suing the writers.

7                   MR. GALARDI: Your Honor, if -- and if I've missed  
8 your point that 901 should not be an injunction against a  
9 certain claims against the debtors. But if we can put it  
10 with respect to the employees and independent contractors to  
11 mirror and work with the third party release, I have no  
12 objection to that.

13                  THE COURT: I'm just wondering why that can't be  
14 done.

15                  MR. GALARDI: I think it can be done, Your Honor.  
16 mean, I'm happy to come back to Your Honor if somebody wants  
17 to pursue an action and say we've gotten -- you know, we've  
18 liquidated our assets. There's no more assets.

19                  THE COURT: Yeah, well, I don't know why anybody  
20 would want to sue a shell.

21                  MR. GALARDI: Exactly why I wanted to do it.

22                  THE COURT: That's precisely why the shell doesn't  
23 get a discharge.

24                  MR. GALARDI: Exactly. But, Your Honor, that's --  
25 and again, the other aspect of this is look, Your Honor, we

1 had this debate to some extent early on with Mr. Denton. To  
2 some extent, I can argue at times that a claim against the  
3 writers and directors, because of indemnification  
4 obligations, is, in essence -- either it's a claim against  
5 us, or it's an extension of the stay. Again, that was the  
6 thinking behind 901.

7 THE COURT: I don't have a problem with the  
8 jurisdiction. Because if they have indemnification rights,  
9 it could have an adverse impact on the estate or the -- I  
10 guess the post-confirmation estate.

11 MR. GALARDI: Well, and, Your Honor, --

12 THE COURT: But that's a jurisdictional issue.

13 MR. GALARDI: Correct, but again, if you think of  
14 the way in which we're going to be able to make the  
15 distributions we're trying to make, indemnification claims  
16 could be out there for three years.

17 THE COURT: Uh-huh.

18 MR. GALARDI: The whole point is we don't want  
19 that -- we called it the indemnification dam -- to stop the  
20 distributions. And frankly, though the debtor has rights  
21 under 502(c) and 502(e)(1), it's not what we want to do as a  
22 First Amendment media company to be arguing with those  
23 individuals that their claims should be disallowed or come  
24 back under 502(j) when and if you have claims for costs. An  
25 estimation under 502(c) is not an easy fight to have. So

1 one of these reasons was to make sure we gave the writers  
2 and editors the greatest protection we could possibly give  
3 them, have Your Honor, who sat before this case, understand  
4 why we're doing this, and then work through the releases and  
5 the third party releases.

6 THE COURT: Well, why don't you tell me why third  
7 party releases are the ones you propose are appropriate in a  
8 case like this?

9 MR. GALARDI: Your Honor, again, in a case like  
10 this, third party releases, I believe, are -- if not in a  
11 case like this, I don't know what other case, except one  
12 aspect of this. First, the circumstances are unique, Your  
13 Honor. As Mr. Holden would testify and has been proffered,  
14 one, there are significant First Amendment concerns. And  
15 although we are a liquidating debtor, that was our business.  
16 And we do want to protect the writers and editors.

17 Two, we believe the writers and editors have, in  
18 fact, provided substantial consideration in these cases.  
19 One, by continuing to write the articles and generating the  
20 revenue, but more importantly, as tailored, the writers and  
21 editors that have, in fact, voted in favor of the plan have  
22 given consideration, consideration not only with respect to  
23 the waiver of their claims, but also consideration that is  
24 tantamount and will amount to certain tax advantages and  
25 therefore, a bigger pot to all of the entities by allowing

1 us to consummate that plan, make the distributions, and  
2 avoid litigation with respect to, as I've mentioned now  
3 twice, 502(c) estimation for their defense costs and 502(e)  
4 with respect to the rights of indemnification and arguing  
5 that their claim should be zero with a right to hold a  
6 reserve and come back under 502(j).

7 In addition, Your Honor, we think that these  
8 particular provisions of 9.05 have been narrowly tailored.  
9 In particular, as I pointed out to Your Honor, if Mr. Holden  
10 would testify, we have not -- though there is an issue in  
11 the law. We have not tried to give a third party release  
12 with respect to gross negligence or willful misconduct.  
13 Second, the only parties getting the third party releases  
14 are the released employees and independent contractors.

15 And if Your Honor goes back to the definition,  
16 those are essentially those people that were writers,  
17 editors of articles. With respect to those individuals,  
18 Your Honor, Mr. Holden would testify that, based on his  
19 knowledge, they are not particularly wealthy individuals,  
20 nor can they stand to defend the litigation on behalf of  
21 themselves in the event that somebody brought a litigation.  
22 In addition, under the circumstances, as I have said, the  
23 statute of limitations is one to three years. So we think  
24 that the value of these third party releases are really for  
25 a limited time.

1                   We believe that anybody who would be bringing such  
2 action should have brought an action or claim in the  
3 bankruptcy, knowing that Gawker was in bankruptcy and  
4 therefore, Gawker could have dealt with those claims in  
5 bankruptcy. And we believe that anybody that would simply  
6 go against the writer knowing them -- going against a writer  
7 as a Gawker writer -- would only be doing so whether it was  
8 for a malicious intent or other intent, because knowing that  
9 they do not have substantial assets. And the only assets  
10 that they have would be the indemnification claims that they  
11 would have against the debtor and not having the resources  
12 to defend, we believe that those third party releases under  
13 these circumstances for both pre and post-petition articles  
14 written on behalf of the debtors are appropriate in these  
15 circumstances.

16                   So we think we satisfy the unique circumstances,  
17 we think we satisfy the substantial consideration, we think  
18 we've narrowly tailored. And to the extent, as I've  
19 mentioned, Your Honor, sometimes third-party releases come  
20 with a box that you can check to check out, with respect to  
21 those parties -- but that's only good as people who have  
22 filed claims -- with respect to the one party that  
23 essentially checked the box to check out, Terrell, that's  
24 left, we're letting them go ahead and pursue it and we're  
25 going to indemnify. And that's going to be costly for us to

1 do so, but we think it's valuable to do so.

2 And we are getting consideration from those  
3 parties with respect -- from the employees and the other  
4 contractors in exchange for not having claims and being able  
5 to make distribution and achieve a greater recovery for  
6 unsecured creditors. Less risk to the recoveries of the  
7 unsecured creditors of Gawker Media and a greater recovery  
8 for the other preferred shareholders, though that is -- but  
9 with respect to that, the preferred shareholders who as Your  
10 Honor has noted really is a fight between preferred  
11 shareholders versus the creditors, the preferred  
12 shareholders have chosen to leave that reserve there, take  
13 less early, and they themselves have chosen to leave at  
14 least part of that guaranty available so that they can stand  
15 behind the writers.

16 So we think in those circumstances these third-  
17 party releases are appropriate under the Second Circuit  
18 standard.

19 Your Honor, I think I addressed your topics, I  
20 think I addressed what I need: the best interests, the  
21 settlements, the third party; is there any other topics that  
22 you would like me to address?

23 THE COURT: No.

24 MR. GALARDI: I would turn it over to Mr. Martin  
25 just to deal with the XP and some more detail on the Johnson

1 seller. Thank you.

2 Your Honor, just as a record matter, I would move  
3 into evidence the certification of the voting tabulation. I  
4 don't know if it's been moved --

5 THE COURT: Does anybody object to the receipt of  
6 the voting tabulation?

7 It's received.

8 MR. GALARDI: Thank you, Your Honor.

9 MR. MARTIN: Your Honor, for the record, Ross  
10 Martin of Ropes & Gray for the debtors, debtors in  
11 possession.

12 As Mr. Galardi indicated, I'd like to take up the  
13 Johnson settlement and then the various submissions by XP  
14 Vehicles, and what I'm going to discuss will be provided for  
15 in a red-lined order, which I'm happy to hand up as well, if  
16 that would be appropriate.

17 THE COURT: Well, Johnson is not really a  
18 settlement, you're just cap -- you're just reserving in  
19 capital, right?

20 MR. MARTIN: That is exactly what I was going to  
21 start with, Your Honor. Unlike the settlements that  
22 Mr. Galardi went through, which are substantive, final  
23 settlements with allowed claim amounts, in Mr. Johnson's  
24 case we are only resolving the confirmation objection and  
25 objection to the estimation motion, which we're withdrawing.

1                   THE COURT: As long as nobody has an objection to  
2                   that, because no money, no property of the estate is being  
3                   paid, that's fine.

4                   MR. MARTIN: Okay. Just for the record, Your  
5                   Honor, I think as Mr. Galardi indicated, part of that  
6                   arrangement also is that GotNews and Mr. Johnson will not be  
7                   pursuing claims against writers who would have  
8                   indemnification claims over, for much of the reasons that  
9                   Mr. Galardi just indicated.

10                  And I think we spoke on December 1, we have had  
11                  some discussions with GotNews and Mr. Johnson's counsel  
12                  about a potential scheduling and sequencing of that  
13                  litigation; we intend to be back about that. We don't have  
14                  that all worked out yet, maybe we'll have disputes, maybe we  
15                  won't, but as Your Honor indicated there's no substantive  
16                  approval of an allowed claim there. So unless the Court has  
17                  any other questions on that --

18                  THE COURT: No.

19                  MR. MARTIN: -- I'll leave that where it is.

20                  Your Honor, next is with respect to XP Vehicles  
21                  and I'll move through this quickly, Your Honor. As the  
22                  Court is aware, XP Vehicles filed claims against each of the  
23                  debtors prior to the bar date. Our claims objections to  
24                  those were heard on December 1st and in fact the Court  
25                  disallowed all of those claims in an order which is Docket

1 No. 529 for among other reasons, but principally on statute  
2 of limitations grounds.

3 At various times subsequent to that order  
4 disallowing the claims, XP Vehicles has sent to our office,  
5 as well as sent to the Court, not always exactly the same  
6 documents as far as we can tell, but has emailed various  
7 documents. Some of those, in our view, relate to the claims  
8 disallowance and we'll be filing a separate set of papers  
9 with respect to that, but some we believe are best  
10 characterized as relating to confirmation. And so we would  
11 propose that the confirmation order address those and deal  
12 with them. And I'm happy to go through that, it will not  
13 take very long.

14 THE COURT: What are the objections to  
15 confirmation?

16 MR. MARTIN: Your Honor, in --

17 THE COURT: By an entity not holding an allowed  
18 claim.

19 MR. MARTIN: That is why they should be  
20 disallowed, Your Honor, that is exactly correct.

21 If I could for the record, Your Honor, just point  
22 out precisely which items we would like to be considered as  
23 objections to confirmation.

24 THE COURT: Go ahead.

25 MR. MARTIN: Your Honor, the debtors filed a

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1 declaration, Docket No. 570, it's my declaration, which has  
2 four exhibits. And with respect to those, Exhibits A, B and  
3 D each relate to confirmation. A mentions the amicus brief  
4 of certain writers; Exhibit B, an email from XP Vehicles  
5 invokes Mr. Williams' objection to confirmation; and Exhibit  
6 D, although it does not expressly note confirmation,  
7 discusses the size of the asset pool available to creditors;  
8 and we would propose that all of those be considered  
9 objections to confirmation and overruled on the grounds that  
10 XP Vehicles does not have an allowed claim.

11 Exhibit C actually specifically refers to the  
12 claims estimation motion by docket number and we would  
13 simply -- in the confirmation order would ask that that  
14 objection -- or be deemed an objection to the claims  
15 estimation motion, but be deemed moot because we're going to  
16 be withdrawing that motion.

17 Last night, Your Honor, yesterday -- last evening  
18 we received two more emails from XP Vehicles and last night  
19 I filed a follow-up declaration, Docket No. 591, which has  
20 only those two emails attached. And one of those, Exhibit  
21 A, attaches Mr. Juan's (ph) confirmation objection, and  
22 again we would ask that that be treated a confirmation  
23 objection by XP Vehicles, but disallowed because they have  
24 no claim.

25 Exhibit B appears to be best characterized as a

1 request for discovery, which should also be disallowed  
2 because they have no claim and therefore are not allowed to  
3 object to confirmation.

4 We would memorialize that all in a single  
5 paragraph, Your Honor, of the proposed confirmation order,  
6 and unless the Court has further questions, that's how we  
7 propose to treat those various items.

8 THE COURT: Does anyone want to be heard in  
9 connection with the XP claim object -- confirmation  
10 objection?

11 The record should reflect there's no response.

12 I'll sustain the objection for the reason XP  
13 doesn't have an allowed claim. XP is not here to articulate  
14 its objection. I had raised the issue about whether XP can  
15 appear without counsel; the objections were not signed by  
16 counsel as far as I can tell. And to the extent they  
17 incorporate the objections of others, those objections have  
18 been resolved and not hearing from XP, I will assume that  
19 their objections have also been resolved.

20 MR. MARTIN: Thank you, Your Honor. I have  
21 nothing further.

22 MR. GALARDI: Your Honor, with all due respect, I  
23 believe the Court misspoke and said it was sustaining the  
24 objection of XP.

25 THE COURT: No, I'm overruling the objection.

1 MR. GALARDI: Okay, thank you.

2 MR. MARTIN: Thank you.

3 THE COURT: Thanks. Now, let me take a step back.

4 Does anybody object to the proffer of Mr. Holden's testimony  
5 or want to cross-examine Mr. Holden?

6 MR. ZIPES: Your Honor --

7 THE COURT: Yes, sir.

8 MR. ZIPES: -- Greg Zipes with the U.S. Trustee's  
9 Office. I don't think it's necessary to put him on the  
10 stand. I just wanted two points of clarification relating  
11 to the best-interests test. And these may have been  
12 answered and I may have missed them, but one is -- the one X  
13 factor might be indemnification and I just wanted to confirm  
14 -- and there is money going to equity or proposed money  
15 going to equity, so I just wanted to confirm that in the  
16 debtor's best estimate that there are sufficient funds set  
17 aside for any potential indemnification and/or release  
18 claims. And secondly, just to confirm that creditors are  
19 not getting interest under this plan and that there is some  
20 confirmation that's okay with the creditors as money is  
21 going back to equity.

22 THE COURT: Well, they don't vote as to the plan,  
23 there's no --

24 MR. ZIPES: The settlement --

25 THE COURT: -- let me stop. There's no absolute

1 priority issue, everybody has voted for the plan. So even  
2 if they're not getting interest and they would otherwise be  
3 entitled to insist on it, they voted for a plan that doesn't  
4 provide for the payment of interest.

5 MR. ZIPES: And we're -- well, okay, we're talking  
6 about -- okay. Your Honor, I know as to the settlement  
7 parties that isn't an issue because they settled for what  
8 they did, but under the best-interests test, theoretically  
9 there's some --

10 THE COURT: Oh, I see what you're saying.

11 MR. ZIPES: -- but, Your Honor, I don't think that  
12 that's a big number and this is -- these --

13 MR. GALARDI: Your Honor, may I just make one  
14 clarification? It's very important and I thought I did, but  
15 Mr. Holden would testify --

16 THE COURT: Let me ask you a question. Are there  
17 any creditors who have not filed a claim, did not vote and  
18 have not settled, to your knowledge?

19 MR. GALARDI: That did not file a claim, that did  
20 not vote and --

21 THE COURT: Did not settle.

22 MR. GALARDI: Well, Your Honor, yes, in the  
23 following way and I want to be clear. As I mentioned and  
24 Mr. Holden mentioned, maybe I'm not getting it right, but I  
25 hate to use the President-elect's name, but we have received

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1 from one of -- from a law firm, you wrote an article about  
2 the President-elect, now that claim never got filed in this  
3 case. One of the reasons we're concerned about that is  
4 because the statute of limitations on that article has not  
5 run.

6 THE COURT: Okay.

7 MR. GALARDI: So that's the kind of creditor why  
8 we wanted the third-party release.

9 But I also want to correct Mr. Zipes on one thing.  
10 And I thought Mr. Holden and my proffer did it, but as an  
11 equity holder -- so again, let's take the capital structure  
12 -- GMGI is the equity holder of Gawker Media, LLC; GMGI is  
13 not getting any distribution under this plan directly. So  
14 when we talk about equity, and we're really talking about  
15 Mr. Denton, the only way that money goes is by way of the  
16 intercompany claim and whatever residual is left in that  
17 estate is going to pay the intercompany claim, it is not a  
18 payment on account of its equity interest. That's how the  
19 numbers are working out.

20 So I think that's important to make the record  
21 clear.

22 THE COURT: You're saying something different  
23 then. And maybe Gawker Media is not the best example of it,  
24 but take Gawker Hungary, the creditors are getting a hundred  
25 percent under the plan --

1 MR. GALARDI: Correct.

2 THE COURT: -- are they getting interest?

3 MR. GALARDI: No one voted there and we don't  
4 think there are any creditors --

5 THE COURT: Well, the issue that's being raised  
6 though is in a hypothetical Chapter 7 case, if we made all  
7 the assumptions that you made --

8 MR. GALARDI: Correct.

9 THE COURT: -- they'd be getting interest.

10 MR. GALARDI: Your Honor, with respect to that,  
11 that we will reserve for interest on the one claim we know  
12 of of \$30,000 and can modify the plan. That person did not  
13 vote, hadn't objected to late claim. So, again, that is  
14 more of an academic for me, but --

15 THE COURT: Because for the Gawker Media case, I  
16 think the estimate in the liquidation analysis was 91 to 93  
17 percent, so they weren't going to get interest in a  
18 hypothetical Chapter 7 using that case. And are there any  
19 unsecured creditors in the group case?

20 MR. GALARDI: Not other than the indemnification  
21 claims, which again, if Your Honor approves the third-party  
22 release, we don't believe there are claims.

23 THE COURT: So it sounds like it's only in -- best  
24 interest comes down -- putting aside equity for the moment,  
25 best interest comes down to the question of paying interest

1 on this one Gawker Hungary claim.

2 MR. GALARDI: And on the Gawker Hungary claim, the  
3 claim we've put in the estimation that went through the  
4 liquidation analysis, we put in \$100,000 and the claim is  
5 \$35,000, and everything else has been paid in the ordinary  
6 course and that's a disputed claim.

7 THE COURT: Okay. Does that solve the -- resolve  
8 the best interests --

9 MR. ZIPES: That resolves -- it's not going to be  
10 an issue in this case obviously.

11 THE COURT: Okay.

12 MR. GALARDI: And I will put on the record,  
13 because Mr. Zipes asked me and I said before there's 750  
14 left behind in that Gawker Media reserve for the writers and  
15 directors, that is a change to the plan, but it is a change  
16 that benefits the writers and officers. I think when they  
17 came in here today they believed there would be no such  
18 funds, but in light of the fact we couldn't settle that one  
19 aspect and the potential, that actually is additional and it  
20 doesn't harm any creditor.

21 THE COURT: All right. Does anyone else want to  
22 be heard in connection with the application to confirm the  
23 plans?

24 Hearing no response, I'll grant the application.  
25 This turns out to be a hundred-percent case in which the

1 real issue is between the creditors in equity. At this  
2 point the debtor has satisfied the elements of 1129(a). The  
3 plan is feasible; we've just had the discussion about the  
4 best-interests test, so the debtor has satisfied that.  
5 Everyone who voted voted in favor of the plan. So in  
6 economic terms, the plan is certainly an acceptable plan.

7 With respect to the settlements, I'm satisfied  
8 that the settlements are -- certainly fall within the realm,  
9 certainly fall within the lowest point of the range of  
10 reasonableness, which is the standard in this circuit, which  
11 is why I state it that way. The principal claims or all of  
12 the claims are, except for Bollea, unliquidated tort claims.  
13 And I understand the debtor has defenses or thinks they have  
14 defenses and I understand they're going to make motions to  
15 dismiss, but if you make a motion to dismiss and lose any  
16 one of these cases and go before a jury, you can have  
17 another Bollea situation with a devastating judgment.

18 So the ability to settle the claims in the  
19 amounts, assure 100-percent payment to the creditors, avoid  
20 the litigation risks I just described, and avoid the costs  
21 and delays of further litigation certainly makes all these  
22 settlements reasonable.

23 With respect to this discharge issue, I'm prepared  
24 to enjoin any -- from the debtor's point of view -- any  
25 interference with property which is being distributed under

1 the plan. For the reasons I've stated, I don't think that  
2 the debtor -- I'm sure that the debtor is not entitled to a  
3 discharge and no one -- if someone wants to sue a shell --  
4 and I'm putting the writers aside for the moment, but if  
5 somebody wants to sue a shell, they're entitled to under the  
6 Bankruptcy Code. The writers and -- I'll refer to the  
7 writers; I know you refer to them as writers and independent  
8 contractors, but I'll just use the phrase writers -- the  
9 writers are in a slightly different position. I'm not  
10 prepared to say that the First Amendment requires the  
11 release of non-debtor writers in a Chapter 11 case of this  
12 kind. If Congress thought that was appropriate, Congress  
13 would include that in the Bankruptcy Code as it has included  
14 non-debtor stays in the Bankruptcy Code, for instance, in  
15 Chapter 13.

16 That said, I appreciate the First Amendment  
17 issues, I appreciate the tradition and perhaps the legal  
18 requirement that the publisher of articles has to stand  
19 behind the writers. The writers don't make a lot of money.  
20 And the writers have agreed I guess as part of this deal to  
21 surrender any indemnification claims, except with respect to  
22 the Terrell claim because that's an opt-out claim.

23 I also note that no one has objected to the  
24 releases. This is a 100-percent plan or 100-percent plans.  
25 And even the preferred shareholders, who are really the

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1 parties in interest, the Holcomb (ph) class, as is sometimes  
2 said in these cases, is leaving \$2 million on the table at  
3 least as a guarantee to make sure that the claims are paid,  
4 including any indemnification claim.

5 So under the circumstances, I will approve the  
6 third-party releases.

7 I know that there's an appropriate carveout for  
8 gross negligence and willful misconduct. If I can make a  
9 suggestion that the injunction in favor of the third parties  
10 should just say to the extent the claims are released. It  
11 may be that people will come back in the future and seek  
12 relief from that injunction or take their chance and just  
13 bring a litigation against writers, arguing that you were  
14 grossly negligent or you committed a willfully wrong act  
15 when you did whatever it is you did. But, you know, that's  
16 something that we'll just have to allow the events play out,  
17 there's nothing that could be done about that.

18 So I understand that you want to make payment  
19 before the end of the year. Given the amount of money  
20 that's available, I don't have a problem with that -- oh,  
21 one other thing. 9.04, your exculpation provision, you  
22 should carrot in at the beginning to the extent permitted by  
23 Section 1125(b) of the Bankruptcy Code.

24 Get me a confirmation order that I can review.

25 MR. GALARDI: Thank you. And --

1                   THE COURT: Shorter is better than longer. And  
2 with respect to objections, you can simply say that any  
3 objections not resolved prior to the hearing or on the  
4 record are overruled.

5                   MR. GALARDI: Thank you, Your Honor. One other --  
6 and I just -- I missed, but -- I know I listed the money,  
7 but I want to make one other request, Your Honor, and I  
8 apologize in rushing the proffer.

9                   As by my count there would be Bollea, 31 million;  
10 Terrell, 500,000; Ayudari (ph), 750; Williams, 125; Juan,  
11 100. We do have and the intercompany claim I said is I  
12 think around \$5 million. The one other thing, and I  
13 apologize for not raising it, there is a sales tax payment  
14 that needs to be made of 500 for which individual directors  
15 and other former directors have been noticed, we would like  
16 to be able to make that \$500,000 payment as well.

17                  THE COURT: Well, why can't you go effective  
18 before the end of the year?

19                  MR. GALARDI: We are still in negotiations with  
20 Unimoto (ph) regarding the allocation; we have not resolved  
21 that entirely. And we have the ability to waive it and  
22 there are other reasons, Your Honor, but we may very well go  
23 effective before the end of the year, when I get this order  
24 in and we're going to make certain decisions.

25                  THE COURT: All right.

1                   MR. GALARDI: Okay? So that way I just wanted to  
2 let Your Honor be aware and I'm sure Mr. Holden is now happy  
3 that I've mentioned that \$500,000.

4                   THE COURT: Okay.

5                   MR. GALARDI: Thank you very much, Your Honor.

6                   THE COURT: So again the only claim left is the  
7 Johnson/GotNews claim, at least at this point?

8                   MR. GALARDI: That's what I understand to be the  
9 case, Your Honor.

10                  THE COURT: Okay.

11                  MR. GALARDI: Your Honor, now I just -- I think  
12 everything else can move rather quickly.

13                  The next matter on the agenda I believe is Matter  
14 No. 5. Since Your Honor will confirm the plan -- that was  
15 the debtor's request to hire special counsel for the  
16 independent director, Akin Gump, it's been adjourned a  
17 number of times -- with confirmation of the plan, not to ask  
18 Your Honor to approve the fees, but we believe that the Akin  
19 Gump fees are about \$80,000. The Committee has withdrawn  
20 its objection based on confirmation. It will be up to Your  
21 Honor, can we submit an order or would you like to have this  
22 matter --

23                  THE COURT: This is the -- is this counsel for the  
24 independent director?

25                  MR. GALARDI: Correct.

1                   THE COURT: Yeah, it's really a money issue -- I  
2 mean duplication-of-services issue.

3                   MR. GALARDI: Correct.

4                   THE COURT: It's not -- there's nothing improper  
5 about the independent director having separate counsel. I  
6 had the same concerns you have that you have Ropes & Gray  
7 and independent counsel doing the same stuff for the same  
8 clients, so -- but we'll deal with that at a fee  
9 application.

10                  MR. GALARDI: So we'll submit -- counsel for Akin  
11 Gump is here, we'll submit a C&L for the order, Your Honor,  
12 and obviously the rights are reserved with respect to  
13 duplication.

14                  Your Honor, the next matter on the agenda was our  
15 first omnibus objection to director, officer and employee  
16 indemnification claims, they went to Hungary. That matter  
17 is now mooted by Your Honor's confirmation, confirming the  
18 plan and approval of the releases.

19                  THE COURT: Right.

20                  MR. GALARDI: With respect to No. 7, it's the  
21 motion to estimate that was carried from the December 1  
22 hearing. We will withdraw that motion; there is no longer  
23 any need for that motion.

24                  And with respect to Matter 8, which was the notice  
25 of motion from Mr. Daulerio to estimate -- our motion to

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1 estimate his claims, obviously we'll resolve that with the  
2 \$500,000. So that matter is resolved and need not be  
3 prosecuted.

4 I suspect, Your Honor, we have a hearing on  
5 December 29th with respect to the underlying merits of  
6 Mr. Daulerio's claim of 500, I'm expecting that we will  
7 probably request an adjournment as we get the invoices.

8 THE COURT: All right.

9 MR. GALARDI: Your Honor, one, I'd like to thank  
10 you for all of your time on this matter so far. I'm sure we  
11 will be back, but I do appreciate your efforts in moving  
12 these cases forward in the six months.

13 THE COURT: Oh, I thought he was going to object  
14 to confirmation.

15 (Laughter)

16 THE COURT: It's always the person who stands up  
17 as they're about to leave. All right, what did you forget?

18 MR. GALARDI: Oh, Your Honor, one other thing, I  
19 think -- and Counsel to Johnson is here and GotNews -- we do  
20 have the status conference on Thursday --

21 THE COURT: The 15th.

22 MR. GALARDI: -- and should we move -- are we  
23 having the Johnson status conference?

24 UNIDENTIFIED SPEAKER: Well, it's scheduled as a  
25 hearing right now.

1                   MR. GALARDI: It's scheduled as a hearing. I  
2                   don't think it needs to be a hearing, I think we would  
3                   change it to a status conference on that matter, if that's  
4                   possible.

5                   THE COURT: That's fine. Do you want to come in  
6                   on Thursday?

7                   MR. GALARDI: I think we could. Does that work  
8                   for you? Because you had --

9                   THE COURT: Because you had a lot of issues, as I  
10                  recall --

11                  UNIDENTIFIED SPEAKER: It's a status conference,  
12                  right?

13                  MR. GALARDI: Yeah, just a status conference.

14                  UNIDENTIFIED SPEAKER: If it's a status conference  
15                  now --

16                  MR. GALARDI: Just leave it as a status  
17                  conference?

18                  UNIDENTIFIED SPEAKER: Could I just take a look  
19                  and see? Maybe we could do it on the 29th, that way you  
20                  don't have to come back up.

21                  MR. GALARDI: We'd all like to come back on the  
22                  29th.

23                  (Pause)

24                  THE COURT: Why don't the two of you talk?

25                  (Laughter)

1 MR. GALARDI: Thank you, Your Honor.

2 THE COURT: What else, anything else?

3 MR. GALARDI: That's it, Your Honor. Thank you  
4 very much.

5 THE COURT: Anything -- anybody want to remind Mr.  
6 Galardi of anything that he forgot?

7 (Laughter)

8 THE COURT: Thank you very much. Good luck.

9 (A chorus of thank you)

10 THE COURT: Thank you.

11 (Whereupon these proceedings were concluded at 12:24  
12 PM)

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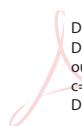
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